Supreme Court of the United States

No 475

APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

BRIEF FOR APPELLANTS

INDEX

APPENDICES.

Table of Cases—Cont'd

Morton Salt [illegible]

N[illegible] v. [illegible]

New York [illegible]

New York v. [illegible]

O[illegible] v. [illegible]

[illegible]

P[illegible] v. [illegible]

People v. [illegible]

People v. [illegible]

Precision Co. v. [illegible]

Preservaline Mfg. [illegible]

Queenside H[illegible]

Railroad [illegible]

Railway Express [illegible] v. N. Y. [illegible]

Rast v. Van Deman [illegible]

Rescue Army v. M[illegible]

Salzburg v. M[illegible]

So. Car. State H. Dept. v. B[illegible]

Sprague v. [illegible]

Stainback v. Mo Hock [illegible]

Thillens v. [illegible]

Toyota v. Hawaii, [illegible] 184

Union Bank & Trust Co. v. P[illegible]

Watson v. Buck, [illegible]

W[illegible] v. Brundage [illegible]

West Coast Hotel Co. v. Parrish, [illegible]

Williams v. Baltimore, [illegible]

Williamson v. Lee Optical [illegible]

Wilson & Co. v. [illegible]

Worden & Co. v. Cal. Fig Syrup Co., [illegible]

[illegible]

Fourteenth Amendment to Federal Constitution [illegible]

Statutes Cited

Books Cited

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 475

LLOYD MOREY, Auditor of Public Accounts of the State of Illinois; LATHAM CASTLE, Attorney General of the State of Illinois; and BENJAMIN S. ADAMOWSKI, State's Attorney of Cook County, Illinois,

Defendants-Appellants

v.

GEORGE W. DOUD, DONALD Q. McDONALD, and J. WESLEY CARLSON, doing business as Bondafied Systems, and EUGENE DERRICK,

Plaintiffs-Appellees

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR APPELLANTS

Appellants appeal from the final decree of the United States District Court for the Northern District of Illinois, Eastern Division, entered June 18, 1956, by a three-judge court, granting after notice and hearing a permanent injunction enjoining them from enforcing the provisions of the Illinois Corrupt Practices Statute (30 to 30d, Chapter

Ill. Rev. Stat. 1955) against appellees so long as the latter engage only in the business of issuing and selling money orders. (Rec. 530, 528.)

After the entry of the final decree and prior to the filing of notice of appeal, Orville Hodge resigned as State Auditor of Public Accounts, and appellant Lloyd Morey, his successor, was substituted by order of the District Court. (Rec. 530.)

Likewise, after the appeal was perfected, the term of office of John Gutknecht as State's Attorney of Cook County, Illinois, expired, and Benjamin S. Adamowski was elected his successor. By order of this Court pursuant to stipulation, the latter has been substituted.

Also, it was ordered by this Court pursuant to stipulation that this cause may be heard upon the transcript of record printed and now on file in *Doyle et al. v. Hodge, et al.*, No. 129, October Term, 1955, together with the printed record of the proceedings in the District Court following this Court's order of remandment entered in No. 129, October Term 1955. (350 U. S. 485.) (Rec. 533.)

Opinions Below

The opinion of the District Court in connection with the decree from which this appeal was taken is not yet reported. Copies of the opinion, findings of fact, conclusions of law, and decree, are attached hereto as Appendix A. (Rec. 517-528.)

The prior opinion of that Court rendered prior to this Court's order of remandment, is reported in 127 F. Supp. 853. Copies of that opinion, dissenting opinion, findings of fact, conclusions of law, and decree, which this Court reversed and remanded (350 U. S. 485), are attached hereto as Appendix B.

Jurisdiction

This action was brought under 28 U.S.C. sec. 2281 to procure a temporary and permanent injunction enjoining appellants, Illinois' State Auditor of Public Accounts, Attorney General, and State's Attorney of Cook County, Illinois, from enforcing against appellees, the provisions of the Illinois Currency Exchange Statute, Ill. Rev. Stat. 1955, Chap. 16½, pars. 30-56.3, secs. 01-30, Vol. 1, pp. 252-264, on the sole ground that the statute allegedly denied appellees equal protection in violation of sec. 1 of the 14th Amendment to the Federal Constitution because it exempted from its operation the money orders of American Express Company. (Rec. 16).

No temporary injunction was applied for.

On February 9, 1955, the District Court, after a hearing on the merits, dismissed the amended complaint for want of jurisdiction. (Rec. 510; 127 F. Supp. 853; Appendix B).

On March 26, 1956, this Court reversed and remanded with directions to take jurisdiction, but said, "we do not decide what procedures the District Court should follow on remand." 350 U.S. 485.

On June 18, 1956, the decree now appealed from was entered. (Rec. 528; Appendix A).

Notice of appeal was filed August 6, 1956 (Rec. 530).

The jurisdiction of this Court to review the decree by direct appeal is conferred by 28 U.S.C. secs. 1253 and 2101(b).

Probable jurisdiction was noted December 3, 1956 (Rec. 534).

Statute Involved

This case involves the constitutional validity of the Illinois Currency Exchange Statute (approved June 30, 1943, in force October 1, 1943, as amended 1945, 1947, 1949, 1951, and 1953), Ill. Rev. Stat. 1955, Chap. 16½, pars. 30.56.3, secs. 01.30, Vol. 1, pp. 282-290. The statutory provisions are lengthy and therefore set forth in Appendix C.

Questions Presented

1. The Illinois Currency Exchange Statute, cited above, provides for the licensing, regulation and supervision by the State Auditor of Public Accounts of community currency exchanges as defined therein. Sellers of money orders under their own personal or trade names are in general within the statutory definition of such currency exchanges. The statute specifically exempts from its operation state and national banks, and money orders issued by the United States Post Office, *American Express Company*, Postal Telegraph Company and Western Union Telegraph Company.

Appellees, a limited partnership and its agent, all residents of Illinois, have issued and seek to continue to issue and sell in that state the personal money orders of the partnership under its tradename without complying with the statute. Does the exemption of American Express Company money orders, there being no corresponding exemption for appellees, deny appellees the equal protection of the laws?

2. Should the District Court have held that the Illinois courts have never passed upon the precise legal questions presented herein and therefore have remitted appellees to those courts?

3. If the exemption of American Express money orders violates the equal protection clause, should the District Court have held the exemption severable?

4. Should the District Court have held that appellees' method of doing business, which has included and admittedly will include the issuance and sale of their money orders upon representations imprinted on the face thereof that the money transfers were "licensed" and "bonded" and that they "operated under license granted" them, when neither they nor the transfers were licensed or bonded under the statute, and which included the use of a common tradename by independent money order businesses in several states which had no responsibility to or for each other, constituted such violation of federal and state law as to debar appellees from relief?

5. Did appellees make such a showing of irreparable injury, clear, great and imminent, and of such exceptional circumstances, as to entitle them to injunctive relief in the federal court?

Statement

During the early 1930's, concurrently with the closing of many banks in the Chicago area, the public need for simple bank facilities gave birth to a new business known as the currency exchange, which sold its personal checks under the name of money orders, or cashier checks, or engaged in both such activities, and often performed such incidental services as accepting for payment local utility bills, obtaining automobile licenses, and rendering notarial and photostat services.

The bank holiday in 1933, and the reduced number of banks thereafter, created such a demand for the services of currency exchanges that they multiplied rapidly. In

nois. *Gadlin v. Auditor of Public Accounts*, 414 Ill. 89, 97. New problems ensued due to the fact that many went into the business on an inadequate investment without sufficient safeguards for the protection of the public. The resulting insolvency and defalcations of some of the operators with accompanying losses to the public led in 1943 to the passage of the Illinois Community Currency Exchange Act. Between 1943 and 1955, it was amended in 48 particulars. (Rec. 305-309) (Appendix C)

The Illinois Act was the first of its kind in the country, and it was said that it "will in all probability become the model for similar statutes in other jurisdictions, for the reason that the statute attempts to combat evils which exist in many parts of the country." 156 ALR 1068.

Wisconsin in 1945 copied the 1943 statute, but never adopted the amendments. (1955 Wisc. Stats. sec. 218.05, p. 2917). Later, California, (Deerings' Cal. Codes, Annot. Financial Div. sec. 12000 et seq.); New York (N. Y. Consol. Law Serv., Vol. 1 Banking Law, secs. 366-374); and New Jersey (Title 17, N. J. S. A. sec. 17: 15 A 1; L. 1951 C 187, p. 696), adopted legislation of varying degrees of similarity.

The Illinois 1943 statute contained a broad comprehensive plan for the regulation of currency exchanges from their inception to their dissolution or liquidation, to the end that the public dealing with and entrusting funds to them, might be protected against the dishonesty, bad judgment, or misfortune of the currency exchange operators, which it may reasonably be assumed, furnished ample background for the passage of the legislation.

In 1944, the act was attacked in the state courts by certain community currency exchange operators for alleged repugnance to the state and federal constitutions, and particularly the 14th Amendment. It was claimed, *inter alia*,

that the exemption of American Express, Postal Telegraph, and Western Union money orders violated equal protection.

The Illinois Supreme Court in 1945 upheld the constitutionality. *McDougall v. Lawder*, 389 Ill. 141. The court said that the business was one in which the public, entrusting funds to the currency exchanges for an indefinite length of time, deserved more protection than only the skill, judgment and good luck of the proprietor; that the opportunities for loss through embezzlement, larceny, the unauthorized use or the mishandling of funds, were obvious; and that as to the exemption, the legislature had "in contemplation purely local problems", and that the exempted companies were "all highly responsible institutions operating all over the world and in no sense to be considered as local companies engaged in community affairs." (p. 151.)

In 1948, the Illinois Supreme Court held that the 1943 statute could not be construed to include mobile units cashing payroll checks on the employers' premises pursuant to private contract. However, the court expressly adhered to the McDougall decision and again pointed out the local nature of the currency exchange business. *People v. Thillens*, 400 Ill. 224, 230, 236.

In 1950, a three judge federal district court in Wisconsin passing upon the Wisconsin statute held that the exemption of American Express denied plaintiffs there, who were engaged exclusively in the money order business, equal protection so long as they engaged only in that business and not in the additional activity of cashing checks. It said that because American Express and plaintiffs there sold their money orders through agents located in retail stores, they were entitled to the same legislative treatment, since they were in direct competition with each other. If plaintiffs were to engage in the "regular" currency exchange busi-

ness, then they could not complain, it said, because then they would not be in direct competition. It rejected the McDougall decision in favor of an Illinois decision rendered years before the Illinois statute was passed, *i.e.*, *Wedeking v. Brundage*, 297 Ill. 228, and thus despite the fact that the McDougall decision distinguished *Wedeking v. Brundage* because of the difference in the statutes involved. 389 Ill. 141, 150.

The Wisconsin court said that the financial condition of American Express was no guaranty that it would continue, and that the McDougall decision misplaced its emphasis on the local nature of the currency exchange business. *Currency Services v. Matthews*, 90 F. Supp. 40 (W. D. Wisc.)

Thus the Wisconsin decision, decided in a state which has only 7 currency exchanges (Rec. 110), and from which no appeal was taken, made a differentiation nowhere found in the statute and expressly repudiated the controlling Illinois decision.

The decree now here appealed from is predicated entirely upon the Wisconsin decision. It likewise rejected the McDougall decision because, as the court said, "it does not appear" that the Illinois Supreme Court "had occasion to consider the full extent of the Act's discriminatory effect," and "it is difficult to accept the attempt to explain the exemption * * * on the basis that regulation of that company is not required in order to protect local interests." (Appendix A)

In 1951, the Illinois legislature amended the statute in a number of significant particulars. It added its findings and declarations which *inter alia* pointed up the local nature of the business (par. 30, sec. 01); it defined "community", and prohibited the issuance of a license unless it would promote the convenience and advantage of the community in which the proposed business was to be conducted (par. 34.1,

(sec. 4.1); and it expressly incorporated the regulation of ambulatory currency exchanges, or mobile units, so as to overcome the effect of *People v. Thillens*, 400 Ill. 224, referred to *supra*.

In 1953, the Illinois Supreme Court upheld the constitutionality of par. 34.1 (sec. 4.1), holding that the "unrestricted issuance of licenses in a community to the point of saturation would tend to decrease the net earnings of each exchange to the point of insolvency of one or more of the exchanges with the inevitable result of losses to the public." *Gadlin v. Auditor of Public Accounts*, 414 Ill. 89, 95. Thus the court again emphasized the local nature of the business.

In *Thillens, Inc. v. Hodge*, 2 Ill. (2) 45, decided in 1954, the court distinguished *People v. Thillens*, 400 Ill. 224, *supra*, and refused to affirm a lower court judgment which invalidated the 1951 amendment relating to the ambulatory currency exchanges, thus showing the comprehensive sweep of the legislation intended for all units in the currency exchange business. The lower court, on retrial, has again voided the ambulatory amendment on the ground that it was not a proper exercise of the police power, and the appeal therefrom is now pending in the Illinois Supreme Court. (No. 34315)

Par. 30 (sec. 01) of the statute in controversy recites *inter alia* that the business has become so widespread since the bank holiday in 1933 and so extensively and intimately integrated with the state's financial institutions that it is affected with a public interest; that their number should be limited in accordance with the needs of the communities they are to serve; and that it is in the public interest to promote and foster the community currency exchange business and to *assure their financial stability*.

Par. 31 (sec. 1) defines a community currency exchange as "any person, firm * * * except * * * banks * * * engaged

at a fixed and permanent place of business, in the business * * * of * * * cashing checks * * * for a fee * * *, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money orders, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services."

Par. 34.1 (sec. 4.1) defined community as a locality where there may or can be available to the people thereof the services of a community currency exchange reasonably accessible to them, and prohibited the issuance of a license that would not promote the convenience and advantage of the community.

Par. 35 (sec. 5) required performance bonds ranging from $3,000 to $25,000 for the benefit of creditors of the currency exchange.

Par. 36 (sec. 6) required insurance policies ranging from $2,500 to $35,000 against loss by burglary, larceny, robbery, forgery, or embezzlement.

Par. 37 (sec. 7) required that each exchange have a minimum of $3,000 cash available at all times, exclusive of funds received for exchange or transfer, and in addition, sufficient liquid funds on hand to pay on demand all its outstanding money orders.

Par. 38 (sec. 8) provided that an exchange must be an entity, financed and conducted as a separate business unit.

There are over 607 licensed community currency exchanges in Illinois. (Rec. 293; Defs.' Ex. 7, Rec. 96, 289) For the fiscal year ended in 1952, they issued almost half a billion dollars of their money orders. Their assets ex-

cooled 15 million dollars, and their furnished performance bonds covering 91.7% of their average money order liability. (Defs.' Ex. 7, Rec. 96, 399, 400, 401)

Into this environment, and in the face of such a pronounced state public policy to protect the people of Illinois against worthless money orders, and financially irresponsible operators, appellees, a limited partnership under the name of Bondified Systems, and its agent, a druggist, injected their money order business in 1953, and seek to nullify that policy by proposing to establish, on an investment of $10,000, without state license or regulation, 500 or more agencies in Illinois for the sale of their *personal* money orders (Rec. 19) under the name of Bondified, upon representations imprinted on their money orders that they "operated under license granted" them, and that the money transfers were "licensed" and "bonded." (Defs.' Exs. 1, 4, 5, Rec. 96, 258; Pltfs.' Ex. 14, Rec. 96, 218)

Bondified Systems

The history and activities of appellees, who claim they are comparably situated, and in the same class, with American Express, are entitled to notice.

On May 18, 1953, appellees Dodd, McDonald and Carlson organized Currency Services of Illinois, Inc., a Minnesota corporation, on a stated capital of $10,000 to manufacture, sell and distribute money orders, and other currency services materials, and to appoint agents in Illinois to sell and distribute money orders and other materials. (Defs.' Ex. 2, Rec. 96, 259, 260)

Their application for a license to do business in Illinois was denied. (Pltfs.' Exs. 1; 2, Rec. 95, 126, 127)

They then changed their corporate name to Bondified Systems, Inc., amended their articles of incorporation to

preclude their conduct of a currency exchange business (Defs.' Ex. 2, Rec. 96, 259, 266), and on July 30, 1953, secured a certificate of authority to do business in Illinois, which expressly prohibited it from engaging in the currency exchange business. (Defs.' Ex. 3, Rec. 96, 269, 272)

Under date of August 6, 1953, the corporation received a franchise from Checks, Inc., a Minnesota corporation, to sell to the public directly and through agencies to be appointed by Bondified Systems, Inc., in certain areas in Illinois and Indiana, "Bondified" money orders, a name apparently originated by Checks. Bondified agreed to capitalize with not less than $40,000 paid in. (Pltfs.' Ex. 5, Rec. 95, 135)

Checks, Inc. was capitalized at $50,000 (Defs.' Ex. 6, Rec. 96, 277, 287), and its principal interest in granting the franchises was the revenue it derived from the printing and sale of the money order blanks and other materials and advertising copy. (Pltfs.' Ex. 5, Rec. 135, 136, 138)

Under date of August 15, 1953, Bondified Systems, Inc. assigned to appellees, Doud, McDonald and Carlson, who organized a limited partnership called Bondified Systems (Pltfs.' Ex. 3, Rec. 95, 128), that part of the franchise relating to Illinois. (Pltfs.' Ex. 6, Rec. 95, 143)

On November 14, 1953, the Bondified corporation and the Bondified partnership, by an agreement signed on behalf of each by the same appellees, completely unified their businesses as one entity only, with the same office, same books, same operating employees, same bank accounts, same employee tax returns and related operational elements. The partnership would be the operating agent of the corporation in Indiana. Thirty thousand dollars of the money appellees were to pay for their stock in the corporation was to be diverted to their partnership. (Pltfs.' Ex. 10, Rec. 169)

Three bank accounts were opened: the Bondified corporate account; the partnership special account; and the partnership operating account. (Rec. 61, 62; Pltfs.' Ex. 8, Rec. 95, 157, 159, 161) The special account, out of which the money orders were to be paid, was to be commenced with an initial deposit of $10,000. (Pltfs.' Ex. 8, Rec. 95, 157, 158)

The corporation commenced business in Indiana November 9, 1953. During its first year, it appointed 120 agents there, and sold $1,140,000 of money orders. (Rec. 52, 64) At the end of that period, there was only $38.10 in the corporate bank account. (Rec. 57, 61)

There was approximately $4,000 in the operating account. (Rec. 62)

There was $22,827.53 in the special account the day before the trial, November 30, 1954 (Rec. 62); but none of appellees knew the amount of their outstanding unpaid money orders (Rec. 49, 75). Nor did they know what part of these accounts belonged to the corporation and the partnership respectively. (Rec. 66)

The corporation "siphoned" into the partnership $15,000 or $16,000 that has not been repaid. (Rec. 47, 65) Thirty thousand dollars of appellees' stock subscriptions were diverted to the partnership. (Rec. 46) This has not been repaid.

They have no other assets except some office equipment and stationery. (Rec. 66)

Thus the corporation has only a few dollars. The partnership owes the corporation at least $45,000, and has about $27,000 in their operating and special accounts, against which there is an undisclosed amount of outstanding unpaid money orders.

Appellees do not "bond" their money orders. The only bonds disclosed were: (1) a $10,000 bond "given their bank to protect it against overdrawal." (Pltfs.' Ex. 9, Rec. 95, 163); (2) a $1,000 fidelity bond given by their agent to protect them against his fraud or dishonesty (Pltfs.' Ex. 13, Rec. 95, 186-190); (3) a $10,000 bond indemnifying them against loss resulting from dishonesty or fraud committed by any employee (Pltfs.' Ex. 7, Rec. 95, 147-155). It will be noted that there was no performance bond for the benefit of money order purchasers, as required by par. 35 (sec. 5) of the statute, and that appellees Doud, McDonald and Carlson were not in any way bonded for the protection of the public dealing with them and their agent.

Despite the foregoing evidence testified to by appellees themselves, the court below "were persuaded by the plaintiffs' sincerity," and said that "the plaintiffs, who have adopted a number of precautionary measures to *insure protection of their customers*, have no opportunity to prove their trustworthiness." (Appendix X.)

American Express Company

American Express was organized in 1868 under the laws of New York as an unincorporated joint stock association with a worth then of 18 million dollars. It has a board of directors; officers; shareholders; a stock transfer book and agent; an executive committee; and substantially all other corporate amenities. (Defs.' Deposition Exs. 1, 2, 3, Rec. 96, 389, 400, 434.)

Its assets now exceed a half a billion dollars. (Rec. 466.)

It is a worldwide institution of vast ramifications and proportions engaging in such activities as world-wide travel service, foreign remittances, domestic money orders, travelers' checks, and importing and exporting ship-

ments. As a depositary of the federal treasury, it submits to government surveillance and furnishes periodical financial reports. Its wholly owned subsidiary is licensed by the New York State Banking Department. It has a network of 309 offices all over the world, of which 63 are in this country. (Rec. 320, 321, 322, 335, 341, Defs.' Deposition Exs. 4 to 13, Rec. 96, 438-502.) Its principal office is in New York City. (Rec. 327.)

When the bank holiday was declared in 1933, the company received special permission from the Treasury Department to stay open; it shipped, via airplanes, currency all over the Country, and paid all its obligations in cash. (Rec. 326, 327.)

It started selling its money orders in 1882, and has never defaulted in the payment of its obligations. (Rec. 325, 363.) It has survived every financial depression.

It operates several offices in Illinois, where it was doing business long before the Currency Exchange Statute was passed. (Rec. 336, 337.) It maintains well over 2 million dollars on deposit in 14 Illinois banks. (Rec. 327.)

The court below said of it: "It is further suggested * * * that the exemption merely reflected the high integrity and financial responsibility of American Express which is unique in its field. No one denies these facts." (Appendix A.)

On its original decision, the majority of the lower court held that the constitutional question could not be decided in the absence of an authoritative determination by the Illinois Supreme Court. 127 F. Supp. 853, 856. (Appendix B.)

In its present decision after the remand, the District Court, without expressly passing on the point, concluded that the inclusion in the statute of one engaged solely in the money order business, coupled with the exemption of

American Express engaged in that very business, rendered the statute discriminatory as to appellees engaged solely in that business but not in the "ordinary" business of a currency exchange. (Appendix A) The characterization "ordinary" appears nowhere in the statute.

Summary of Argument

The decisions of this Court leave no doubt of the validity of the exemption. Whether the statute denied appellees equal protection depends upon whether it was an arbitrary and unreasonable distinction for the legislature to make; and the burden was upon appellees to show such was the fact. The record is void of any showing in that regard. That there are towering differences between appellees and American Express Company relevant to the legislative purpose cannot be denied and was undisputably proved. The Illinois legislature had the right to believe that the evil sought to be curbed, namely, the sale of worthless money orders by financially irresponsible persons, did not exist in the case of American Express as it did in the case of local operators who, like appellees here, often operated on a shoestring, and that the public interest would be no more advanced by bringing that company under the statute than it would by bringing the Postoffice and banks and telegraph companies under it. The Constitution does not prohibit exemptions inflexibly and always. The problem is a local one and in the last analysis one of legislative policy, with a wide margin of discretion conceded to the lawmakers.

The lower court emphasized that appellees are not engaged in the "ordinary" business of a currency exchange, a distinction that conflicts with the plain language of the statute. It rejected the controlling Illinois decisions and the public policy of that state as additionally manifested by later statutory amendments which postdated the Wis-

consin decision upon which the lower court based its action. The need of a determination by the Illinois Supreme Court, as originally decided by the majority of the court below, would seem to be still present, and the parties should have been remitted to the state courts.

The Illinois Supreme Court has never decided whether the exemption, if invalid, is severable.

Appellees came into equity with unclean hands because of false representations imprinted on their money orders that they "operated under license granted" them, and their "money transfer" was "licensed" and "bonded", and because of the indiscriminate use of their tradename "Bondified" by owners of independent money order businesses in various states not responsible for each other's liabilities and acts.

There was no evidence of irreparable injury, clear, great and imminent, and of such exceptional circumstances as would entitle appellees to federal injunctive relief. They commenced their business in 1953 with full knowledge that the statute prohibited them from so doing, and according to their own evidence, it is insolvent. Any loss they may have sustained, if any at all, was not due to appellants' conduct, and could have been obviated in large measure by appellees themselves.

ARGUMENT

I.

The Illinois Currency Exchange Statute, as amended, did not deny appellees the equal protection of the laws.

Whether the statute denied appellees equal protection depends upon whether it was an arbitrary and unreasonable distinction for the legislature to make between American Express and them; and the burden was upon them to show such was the fact. The record is void of any showing in that regard except one sole circumstance: they sell their money orders through agents located in retail stores much as does American Express. There the similarity ends. Even the context of the money orders they sell is radically different.

That there are towering differences between American Express and appellees as to solvency, size, financial responsibility, security, business and monetary facilities, age, experience, history, governmental surveillance, and any other thing having any relation to the protection of the public from loss, is not and cannot be denied. In fact, appellees' counsel admitted upon the trial that American Express "is a large, solvent, great organization, world wide" (Rec. 104), and the court below made a similar observation. (Appendix A)

Wedesweiler v. *Brundage*, 297 Ill. 228, so strongly relied upon by the Wisconsin federal court, expressly made the point we seek to emphasize here, that if the exemption there was predicated upon anything "having any relation to the protection of the public from loss by reason of the dishonesty, incompetence, ignorance or irresponsibility of

persons in that business," it would have been held valid (Rec. 237).

The test of equal protection is not whether the businesses are in any respect similar, but whether the similarity is relevant to the legislative purpose. The similarity in the manner of selling money orders through agents located in retail stores certainly affords no protection to the public, and bears no relevancy at all to the legislative purpose.

The legislature had the right reasonably to believe that the money orders of American Express were so much safer than those issued by the class of local operators of which appellees constitute a part, that their exemption like that of the banks and telegraph companies, was warranted.

That appellees compete with American Express does not prove they are comparably situated any more than it proves that the "ordinary" currency exchanges are comparably situated because they likewise compete with American Express—a point both the Wisconsin and Illinois federal courts seemed to have lost sight of. "Mere competition between them is not enough to show two concerns must be burdened alike" in relation to the equal protection clause. *Union Bank & Trust Co.* v. *Phelps*, 288 U. S. 181, 186.

Nor is it tenable to indulge in speculation as to the future financial responsibility of American Express, as did the Wisconsin court. The legislature "need not take account of new and hypothetical inequalities that may come into existence as time passes or conditions change." *Queenside Hills Co.* v. *Saxl*, 328 U. S. 80, 84. Should the financial condition of American Express change, the legislature could revoke the exemption, or the courts could invalidate it. *Chastleton Corp.* v. *Sinclair*, 264 U. S. 547, 548.

Appellees stress the high cost of the regulation that would be imposed upon them by the statute while American Express is not subjected thereto. But the rule of equality permits many practical inequalities, *New York etc. Corp. v. New York*, 303 U. S. 573, 578, and an otherwise valid statute conferring a privilege is not rendered invalid because particular persons find it hard or even impossible to comply with precedent conditions upon which enjoyment of the privilege is made to depend, *Gant v. Oklahoma City*, 289 U. S. 98, 103, or because of their own failure to enjoy the benefits conferred by the statute as freely as they may, by limiting their business to the performance of only one of the services permitted by the statute, *Aero-Mayflower Transit Co. v. Georgia*, 295 U. S. 285, 289.

A closely analogous case is *Engle v. O'Malley*, 219 U. S. 128. The New York statute there prohibited the business of receiving money for safekeeping or transmission, without a license, and the making of a large deposit and filing of a large bond with the state comptroller, but exempted express and telegraph companies, and persons in the business who received during the preceding year deposits averaging not less than a fixed amount. This Court held the exemptions did not deny equal protection, and speaking through Mr. Justice Holmes said, pp. 137, 138:

> "It is true, no doubt, that where size is not an index to an admitted evil, the law cannot discriminate between the great and the small. But in this case, size is an index."

Individual exemptions excluding companies by name are not violative of equal protection, where a reasonable basis therefor exists. Squarely in point is: *Williams v. Baltimore*, 289 U. S. 36, 42, 46. Other cases are: *Erb v. Morasch*, 177 U. S. 584; *Tonota v. Hawaii*, 226 U. S. 184; *New York v. Zimmerman*, 278 U. S. 63; *Salzburg v. State of Md.*, 346

U. S. 557; and Mr. Justice Holmes' opinion in *Interstate Consol. St. Ry. Co.* v. *Mass.*, 207 U. S. 78, 85.

Statutory discrimination between situations which are in fact different must be presumed to be relevant to a permissible legislative purpose. *Asbury Hospital* v. *Cass County*, 326 U. S. 207, 215, and will not be deemed to be a denial of equal protection if any state of facts could be reasonably conceived which would support it. *Metropolitan Cas. Ins. Co.* v. *Brownell*, 294 U. S. 580, 584; *South Car. State H. Dept.* v. *Barnwell*, 303 U. S. 177, 191. Situations which are different in fact or opinion are not required by the Constitution to be treated as though they were the same. *Goesaert* v. *Cleary*, 335 U. S. 464, 466.

There is no doctrinaire requirement that legislation should be couched in all-embracing terms. The legislature is free to recognize degrees of harm and may confine its restrictions to that class where the need is deemed to be the clearest. The relative need in the presence of the evil, no less than the existence of the evil itself, is a matter for the legislative judgment. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 400.

The reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field, and regulate it, neglecting the others. *Williamson* v. *Lee Optical of Okla.*, 348 U. S. 483, 488, 489, and may direct its law against what it deems to be the evil as it actually exists, nonetheless that the forbidden act does not differ in kind from those that are allowed. *Hall* v. *Geiger-Jones Co.*, 242 U. S. 539, 556, 557; *Hughes* v. *Superior Court*, 339 U. S. 460, 468. The equal protection clause does not mean that all occupations called by the same name, must be treated in the same way. *Dominion Hotel* v. *Arizona*, 249 U. S. 265, 268.

The District Court stated that "the difficulty with this Act is that it denies everyone but American Express the opportunity to demonstrate financial responsibility or the adoption of adequate safeguards to protect the public." (Appendix A) There are several answers thereto.

This Court has uniformly rejected the efforts of litigants to attack legislation on the ground that the rights of others are violated. This litigation is confined to appellees' rights; and does not involve the rights of everyone but American Express.

Moreover, "where a line or point has to be fixed and there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark." Mr. Justice Holmes in *Louisville Gas & Elect. Co. v. Coleman*, 277 U. S. 32, 41.

Some latitude must be allowed for the legislative appraisement of local conditions, *Dominion Hotel v. State of Arizona*, 249 U. S. 265, 268; *Patson v. Pa.* 232 U. S. 138, 144 (pointed out in *McDougall v. Lauder*, 389 Ill. 141, 151, but rejected in the decisions of the court below and the Wisconsin courts), and for the legislative choice of methods for controlling an apprehended evil. Even if we were to assume that appellees are not engaged in an objectionable enterprise (an assumption not based on a realistic appraisal of the records), the legislature was not required to confine its regulation to only the objectionable members of a class and select them by more empirical methods. *Ohio v. Dockelbach*, 274 U. S. 392, 397. If a statute of this character must be considered with reference to the particular circumstances affecting each currency exchange, it might lead to the absurdity of its being held valid in one case and invalid in another. *People v. Eberding*, 254 Ill. 579, 587.

The District Court below criticized par. 38 (sec. 81) of the statute which requires a currency exchange to be conducted as a separate business because it "cannot be reconciled with standards of financial responsibility" (Appendix A). The purpose of that section was to prevent the commingling of funds belonging to the currency exchange business and those from other sources, which the legislature had the right to believe was an unsafe financial practice, to the end that the misfortunes or exigencies of other business may not be visited on the money order funds. It was merely incidental to the regulation of the currency exchange business. *Gadlin v. Auditor of Public Accounts*, 414 Ill. 89, 94. It was for the legislature to decide what regulations were needed to reduce the evils of that business to the minimum, and it was not required to adopt the most conservative course. *Queensside Hills Co. v. Saal*, 328 U. S. 80, 83.

As to the avoidance of process upon American Express, we point out that the company could be sued and served in Illinois as a *de facto* corporation. *Dugan v. Int. Ass'n.* 202 Ill. App. 308, 309; *Sprains v. Draggists*, 232 Ill. App. 427, 429; *Fitzpatrick v. Rutter*, 160 Ill. 282, 286. Since January 1, 1956, secs. 13.4 and 27.1 of the revised Illinois Civil Practice Act expressly permit suit and service against a partnership in its firm name, and secs. 16 and 17 provide for personal service outside the state on persons of other states transacting business within Illinois. Ill. Rev. Stat. 1955, Chap. 110, pars. 13.4, 16, 17, 27.1.

As to the federal courts, Federal Rules 4 (d) (3) and 4 (d) (7) apply. *Wilson & Co. v. W. P. W.*, 83 F. Supp. 162, 166, 167 (S. D. N. Y.); *Bushy v. Electric Union*, 147 F. (2) 865, 867 (App. D. C.); *Operatives, etc. Ass'n. v. Case*, 93 F. (2) 56, 65-68 (App. D. C.).

From the foregoing survey, it would seem evident that the contention of repugnance to the equal protection clause has met with little favor at the hands of this Court. Mr. Justice Holmes called it the "usual last refuge of constitutional arguments." *Buck* v. *Bell*, 274 U. S. 200, 208. Mr. Justice Jackson said that "while claims of denial of equal protection are frequently asserted, they are rarely sustained." *Railway Express* v. *New York*, 336 U. S. 106, 111. And in Constitution of the United States of America, Analysis and Interpretation, published in 1953 by the Legislative Reference Bureau, Library of Congress, it was said (p. 1153) that "except where discrimination on the basis of race or nationality is shown, few police regulations have been found unconstitutional on this ground."

We would be content to submit this appeal on the constitutional issue alone; but we are not empowered to waive the following secondary questions involved here, questions which this Court may raise and consider *sua sponte*. *Douglas* v. *Jeannette*, 319 U. S. 157, 162; *Neese* v. *Southern R. Co.*, 350 U. S. 77, 78.

II.

The Illinois courts have never passed upon the precise legal questions presented here, and the parties should have been remitted to those courts.

The court below emphasized that Appellees are not engaged in the "ordinary" business of a currency exchange, a distinction that sharply conflicts with the plain language of the statute, and one that according to the majority opinion originally rendered, required authoritative determination by the Illinois Supreme Court, 127 F. Supp. 853, 856. The court below repudiated the McDougall decision, 389 Ill. 141, and disregarded later state Supreme Court deci-

sions and later legislative enactments which pointed up the validity of the McDougall decision.

The lower court in its last opinion said that the Illinois Supreme Court did not appear to have had occasion to consider the full extent of the Act's discriminatory effect. (Appendix A) This Court's decision did not pass on the point. 350 U. S. 485. The need of such a determination by the State Supreme Court, which is now magnified by the District Court's ruling, would seem to be still present in the case, *Federation of Labor* v. *McAdory*, 325 U. S. 450, 451; *C. I. O.* v. *McAdory*, 325 U. S. 472, 477; *Railroad Comm.* v. *Pullman Co.*, 312 U. S. 496, 499, 500, and the parties should have been remitted to the state courts. *Stainback* v. *Mo Hock*, 336 U. S. 368, 383.

Moreover, the Illinois Supreme Court has never decided whether the severability clause in par. 563 (sec. 30) of the statute in question would be so applied as to remove the alleged discrimination. Despite the language in the *McDougall* decision, 389 Ill. 141, 151, that the legislature would never have passed the act if they thought the exempted companies would be made subject to it, that case did not pass upon the question of severability because it upheld the exemption. The language in question was intended, we believe, to emphasize the difference between the exempted companies and the local exchanges. Severability is a question that might be more appropriately left for adjudication to the Illinois Supreme Court. *Liggett* v. *Lee*, 288 U. S. 517, 541.

III.

Appellees came into equity wth unclean hands.

Appellees came into equity with unclean hands because of their false representations imprinted on their money orders that they "operated under a license granted" them, and that their "money transfer" was "licensed," and "bonded." (Defs.' Exs. 1, 4, 5, Rec. 96, 258; Pltfs.' Ex. 14, Rec. 96, 218). The natural effect of such language in Illinois, especially when accompanied by such language on the stub as "Pay your bills here," strongly indicative of a currency exchange (Rec. 90, 93), was bound to mislead and deceive the public, and appellees cannot be heard to deny their intention of so doing. *Preservaline Mfg. Co. v. Heller Chemical Co.*, 118 F. 103, 105, 106 (N. D. Ill.) These representations would enable them to profit by the legislation without paying the cost of regulation. Cf. *Kau v. U. S.*, 303 U. S. 1, 6; *Rescue Army v. Municipal Court*, 331 U. S. 549, 569; *Ashcander v. Valley Authority*, 297 U. S. 288, 348.

Also, the indiscriminate use of the name "Bondified" by owners of independent money order businesses not responsible for each other's liabilities and acts, the name being impressed upon the public through a course of unified advertising, is a continuing misrepresentation of the ownership of the business and the financial responsibility thereof. (Rec. 71, 74, 75) *Morton Salt Co. v. Suppiger*, 314 U. S. 488, 494; *Manhattan Medicine Co. v. Wood*, 108 U. S. 218, 224; *Worden & Co. v. Cal. Fig Syrup Co.*, 187 U. S. 516, 528.

Any wilful conduct, not necessarily sufficient to be punishable as a crime or to justify legal proceedings, which can be said to transgress equitable standards of conduct, is su-

ficient to constitute unclean hands; and the doctrine assumes wider and more significant proportions where a suit concerns the public interest, for then it averts injury to the public. *Precision Co.* v. *Automotive Co.*, 324 U. S. 806, 814, 815.

The question is one that might appropriately be left to state court determination, for it involves local law. *Ford* v. *Caspers*, 128 F. (2) 884, 885 (C. A. 7); *De Sylva* v. *Ballentine*, 351 U. S. 570, 580; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168, 172, 173.

IV

There was no evidence of such exceptional circumstances as would entitle appellees to federal injunctive relief.

There was no evidence of irreparable injury, clear, great and imminent. The *only* showing made in that regard was that several months before appellees commenced the sale of their money orders, an employee in the State Auditor's office told them that the office would stand back of the law. (Rec. 41) There was no showing here even of a threat of a single suit. The employee's assertion was not directed against any particular conduct, inasmuch as appellants were not apprised of any violation until the amended complaint was filed, May 5, 1954. (Rec. 29)

This does not constitute irreparable injury. *Watson* v. *Buck*, 313 U. S. 387, 400; *Douglas* v. *Jeannette*, 319 U. S. 157, 162, 163; *Beal* v. *Missouri Pac. R. Co.*, 312 U. S. 45, 50. The penalties in the statute are not so severe as to intimidate against a contest of its validity. *Rast* v. *Van Deman*, 240 U. S. 342, 368. Any moneys paid the Auditor under the statute could later have been recovered if paid under protest and the statute were held unconstitutional. Ill. Rev. Stat. 1955, Chap. 127, pars. 172, 172a.

Appellees commenced their business in Illinois in 1953 with full knowledge of the Illinois statute. (Pltfs.' Ex. 23, Rec. 95, 247). Their position was not like that of a successful business which suddenly finds its very existence threatened by exceptional circumstances of a very serious nature. Such loss, if any, as appellees may have sustained was not due to the conduct of appellants, and could have been obviated by appellees themselves, if they so desired, pending a full hearing in the state courts, with ample opportunity for ultimate review by this Court of the constitutional issue.

Conclusion.

This Court has said many times that the history of federal equity jurisdiction is the history of regard for public consequences and that few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies. *Railroad Comm. v. Pullman Co.*, 312 U. S. 496, 499, 500.

We believe the decision of the District Court lost sight of that important principle.

The decree of the court below should be reversed, or reversed and remanded with appropriate directions.

Respectfully submitted.

LATHAM CASTLE,
Attorney General of the State of Illinois,
Suite 900, 160 N. La Salle Street,
Chicago 1, Illinois (Financial 6-2000),
BENJAMIN S. ADAMOWSKI,
State's Attorney of Cook County, Illinois,
Attorneys for Defendants-Appellants.

WILLIAM C. WINES,
BEN SCHWARTZ,
Assistant Attorneys General,
Of Counsel.

APPENDIX A

The Opinion Below

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Civil Action No. 53 C 2322

GEORGE W. DOUD, DONALD Q. MCDONALD, and J. WESLEY CARLSON, doing business as BONDIFIED SYSTEMS, and EUGENE DERRICK, Plaintiffs

v.

ORVILLE HODGE, Auditor of Public Accounts of the State of Illinois, LATHAM CASTLE, Attorney General of the State of Illinois, and JOHN GUTKNECHT, States Attorney of Cook County, Illinois, Defendants

OPINION - June 12, 1956

Before ELMER J. SCHNACKENBERG, Judge of the United States Court of Appeals for the Seventh Circuit, WALTER J. LA BUY and JULIUS J. HOFFMAN, District Judges.

HOFFMAN, District Judge. The plaintiffs, George W. Doud, Donald Q. McDonald and J. Wesley Carlson, a partnership doing business as Bondified Systems, and Eugene Derrick, agent of said partnership, seek to enjoin the defendants from enforcing the provisions of the Illinois Community Currency Exchange Act (Ill. Rev. Stat. 1955, c. 16½, §§ 30-56.3) against them on the ground that it violates the Fourteenth Amendment to the federal constitution in that it discriminates unlawfully against them and in favor of the American Express Company. The defendants are the Auditor of Public Accounts of the State of Illinois, the Attorney General of the State of Illinois, and the State's Attorney of Cook County, Illinois.

After all of the evidence was heard, this court, pursuant to a memorandum of February 4, 1955, dismissed the complaint for want of jurisdiction. Brief findings of

fact and conclusions of law were entered on February 9, 1955. Our order dismissing the complaint was reversed by the Supreme Court, 350 U. S. 485 (March 26, 1956), which remanded the case to us. Having considered the evidence and the briefs previously filed by the parties, we are ready to determine whether or not the plaintiffs are entitled to the relief they seek.

The Illinois Currency Exchange Act establishes a system of regulation of currency exchanges throughout the state and requires, among other things, a license, the payment of fees, bonds, insurance, annual reports, etc. The provisions of the Act apply to all community currency exchanges as that term is defined in § 31 of the Act. It is in the definition of a currency exchange, however, that the alleged discriminatory provision appears. Section 31 provides:

> "'Community currency exchange' means any person, firm, association, partnership or corporation, . . . engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, *or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders other than* United States Post Office money orders, *American Express Company money orders*, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders, or engaged in both such businesses, or engaged in performing any one or more of the foregoing services." (Emphasis added.)

The plaintiffs, who sell "Bondified" Post Card Checks and Money Orders under a license from Checks, Inc.,* a Minnesota corporation which owns the registered trade mark, contend, and the evidence sustains, that they operate their business in substantially the same manner as that of

* The license agreement with Checks, Inc., was entered into by the corporation organized by the three plaintiffs, Bondified Systems, Inc. In accordance with its terms, however, the license was assigned to the partnership formed by the same three persons.

the American Express Company (i.e., they confine their operations to selling and issuing money orders, and this business is conducted through authorized agents,** located principally in retail establishments such as drug and grocery stores. Yet the plaintiffs are unable to operate lawfully under the Act since § 38 prohibits a currency exchange from being conducted as a part of another business; and even if they could overcome this obstacle, they would be required to obtain a separate license for each agency and to pay the numerous license and inspection fees for each outlet. American Express, on the other hand, is relieved of all these burdens.

The defendants have raised several preliminary matters in addition to the point previously dealt with by this court and the Supreme Court. Defendants claim that the plaintiffs may not invoke the equitable powers of this court because they have not come into equity with clean hands. For this they rely on two matters: (1) On the partnership money order from the word "Licensed" appears at the bottom of the form in small letters opposite the word "Bonded." This is said to amount to a fraud on the public by implying that plaintiffs are licensed under the Illinois Currency Exchange Act; (2) The operation by the partnership under a license from Checks, Inc., is said itself to constitute a fraud because no license of a trade mark may be made unless accompanied by a transfer of the business.

The defense of unclean hands could be summarily disposed of by reference to a similar charge made in *Toomer v. Witsell*, 334 U. S. 385 (1948). The Supreme Court noted that some of the plaintiffs had previously been convicted of violations of the statutes whose validity they attacked.

> "The District Court held that this previous misconduct, not having any relation to the constitutionality of the challenged statutes, did not call for application of the clean hands maxim. We agree." 334 U. S. at

** Plaintiffs, in recognition of the fact that they cannot operate legally under the Illinois Act, have established to date only one agency in this state although they have 120 in operation in Northern Indiana.

393; and see opinion of the District Court, 73 F. Supp. 371, 374 (E. D. S. Car. 1947)

Since the defendants vigorously urge this point, we will go beyond the short answer. While the use of the word "Licensed" might appear ambiguous to us, no evidence was introduced to show that the public is enticed into purchasing Bondified Money Orders by reason of their belief that the plaintiffs hold a license under the Currency Exchange Act. Moreover, we were persuaded by the plaintiffs' sincerity in explaining that they intended the expression to refer to a license from Checks, Inc., to handle Bondified Money Orders. This conduct is clearly not of such a nature as to bar the plaintiffs from relief.

With respect to the license of the trade mark "Bondified" from Checks, Inc., defendants contend that the attempt to license the use of a trade mark without a concurrent transfer of the business itself was ineffective and a fraud. Even if it is assumed that the same principles apply to service marks as to ordinary trade marks, a license may be made of a mark other than as an incident of a transfer of business so long as the agreement is not merely a "naked" license agreement. *E. I. du Pont de Nemours & Co.* v. *Celanese Corp. of America*, 167 F. 2d 848 (Ct. Customs & Patent App. 1948; decided without benefit of the liberalizing provisions of the Lanham Act). In that case the court approved an agreement under which the licensor established certain standards for the licensee to follow in making the product under the assigned trade mark. A trade mark license is valid if it provides for "supervisory control of the product or services." *Arthur Murray, Inc.* v. *Horst*, 110 F. Supp. 678 (D. Mass. 1953). The "Operator Contract" (Pltf. Ex. 5) between Checks, Inc., and Bondified Systems, Inc., through which the plaintiffs are authorized to deal in Bondified checks and money orders, contains numerous controls and standards which Bondified Systems and its agencies must meet and is much more than a "naked" license agreement.

The plaintiffs have, we believe, sufficiently demonstrated the imminence of irreparable injury, entitling them to injunctive relief. See *Toomer* v. *Witsell*, 334 U. S. 385, 391-92 (1948). While the defendants allege that their threats to enforce the Act were general and call attention to the fact that they have taken no legal action against the plain-

tiffs,* they concede that plaintiffs will be required to qualify under the Act and that they will enforce it against plaintiffs when the latter violate it, which admittedly they are doing now. The defendant officials were not apprised of a violation until shortly before plaintiffs filed their complaint. To operate as a currency exchange without first securing a license subjects the plaintiffs to a criminal prosecution and the penalty of a heavy fine, or imprisonment, or both. In the meantime the plaintiffs, presumably to avoid further possible penalties, are withholding establishment of additional agencies and losing the opportunity to conduct and expand their business.

We turn now to the constitutional validity of the Currency Exchange Act as applied to these plaintiffs. In *Currency Services, Inc.* v. *Matthews*, 90 F. Supp. 40 (W. D. Wis. 1950), a federal three court enjoined enforcement of the Wisconsin currency exchange statute, which was virtually identical to the Illinois statute, on the ground that it violated the equal protection clause of the Fourteenth Amendment. The plaintiff in the *Matthews* case, like these plaintiffs, engaged only in the business of issuing money orders. The Wisconsin court held:

> "It is the inclusion, in the definition of the term 'community currency exchange', of one who, though not engaged in the check-cashing business ordinarily designated by that term is 'engaged in the business of selling or issuing money orders', coupled with the exemption of a company engaged in that very business, which, it seems to us, renders the statute discriminatory and unconstitutional as applied to the plaintiff corporation or to any other person or firm engaged in the business

---

* The State's Attorney of Cook County contends that he should not be made a party to this proceeding because the plaintiffs' only agency operating at the moment is not located in Cook County, the territorial limit of his authority. The injunctive relief requested, however, is intended to prevent interference with operation of plaintiffs' business in the future. Moreover, the plaintiffs themselves are located in Cook County, and any attempts to enforce the Act would have to be directed primarily against them in that jurisdiction.

> of selling or issuing money orders but not in the ordinary business of a currency exchange." 90 F. Supp.

We approve the reasoning and conclusions of the Wisconsin court and see no reason to depart from them in this case.

The fact that the constitutionality of the Illinois Act was previously sustained by the Illinois Supreme Court in *McDougall* v. *Lueder*, 389 Ill. 141 (1945), is not conclusive. A close examination of the *McDougall* opinion discloses that the court based its conclusion that the classification was reasonable on the ground that the legislature was concerned only with regulating local community exchanges, as opposed to world-wide operations. This point was answered in the *Matthews* case:

> "While it is true that American Express operates on a world-wide scale, this does not alter the fact that its Wisconsin operations are not at all different from those contemplated by plaintiff corporation and would be subject to the provisions of the statute if carried on by any one other than American Express or its agents." 90 F. Supp. at p. 44.

While we accord great respect to the views of the Illinois Supreme Court, it does not appear that that court had occasion to consider the full extent of the Act's discriminatory effect. Moreover, it is difficult to accept the attempt to explain the exemption of American Express on the basis that regulation of that company is not required in order to protect local interests. The evidence here, while not entirely clear, tends to show that American Express has no license to transact business in this state, is not subject to any form of state regulation, does not always require bonds of its agents, as plaintiffs do, and may even be able successfully to avoid service of process by the courts of this state.

It is further suggested that the real purpose of the Act was to eliminate irresponsible fly-by-night companies, and the exemption merely reflected the high integrity and financial responsibility of American Express which is unique in its field. No one denies these facts. Nor do we suggest that the legislature could not establish reasonable standards of financial responsibility which all would be required to meet to qualify for an exemption. But the difficulty with this Act is that it denies everyone but American

Express the opportunity to demonstrate financial responsibility or the adoption of adequate safeguards to protect the public. The plaintiffs, who have adopted a number of precautionary measures to insure protection of their customers, have no opportunity to prove their trustworthiness. Moreover, at least one of the provisions of the Act cannot be reconciled with standards of financial responsibility. Under § 38 the plaintiff Derrick, who has an established Bondified agency, is prohibited from selling Bondified money orders in connection with his drug store business, but he was permitted to sell American Express money orders at the same store in 1948 and 1949. This restriction exists quite apart from the requirements of licensing and fees. While the plaintiffs have only begun their business,* other Bondified licensees have operated for ten years or more and have conducted a substantial and, so far as this record shows, a responsible business. We are unable to find a reasonable basis on which to sustain the classification expressed in the Illinois Currency Exchange Act.

In view of the Illinois Supreme Court's statement in the *McDougall* case that "The General Assembly would surely never have passed the act if they had thought the said companies [i. e., American Express, Postal Telegraph and Western Union] would be made subject to its rules and regulations" (389 Ill. at p. 151), an injunction will issue restraining the defendants from enforcing the provisions of the Community Currency Exchange Act against the Plaintiffs, so long as they engage only in the business of issuing and selling money orders.

Counsel for the plaintiffs will prepare and submit to the court on or before June 15, 1956, findings of fact, conclusions of law and a judgment order in keeping with the views herein expressed.

---

* Nevertheless, in their first year of operation the plaintiffs sold over $1,400,000 of money orders in Northern Indiana alone.

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

[Title omitted]

Before ELMER J. SCHNACKENBERG, Judge of the United States Court of Appeals for the Seventh Circuit, WALTER J. LABUY and JULIUS J. HOFFMAN, District Judges.

FINDINGS OF FACT AND CONCLUSIONS OF LAW—June 18, 1956

This matter having come on to be heard before the court of three judges convened pursuant to 28 U. S. C. 2281 and 2284 upon the amended complaint filed by plaintiffs and the answers filed by the defendants, and the court having heard evidence presented in open court, having considered the evidence and arguments of counsel and being fully advised in the premises, makes the following findings of fact and conclusions of law:

Findings of Fact

The Court finds:

1. The plaintiffs George W. Doud, Donald Q. McDonald, and J. Wesley Carlson, a partnership doing business as Bondified Systems, and Eugene Derrick, agent of said partnership, seek to enjoin the defendants Orville Hodge, Auditor of Public Accounts of the State of Illinois, Latham Castle, Attorney General of the State of Illinois, and John Gutknecht, State's Attorney of Cook County, Illinois, from enforcing against the plaintiffs the provisions of the Illinois Community Currency Exchanges Act, Sections 30-56.3 of Chapter 16½ of the Illinois Revised Statutes 1955, on the ground that it violates the Fourteenth Amendment to the Federal Constitution in that it discriminates unlawfully against them and in favor of the American Express Company.

2. The amount in controversy herein exceeds the sum of $3,000.00 exclusive of interest and costs.

3. The partnership of plaintiffs Doud, McDonald and Carlson is organized to engage, and has been engaging, not in the ordinary business of a currency exchange, but exclusively in the business of selling and issuing money orders

through agents who are principally persons engaged in operating retail stores.

4. The plaintiffs sell "Bondified" postcard checks and money orders under a license from Checks, Inc., a Minnesota corporation which owns the registered trademark, and they operate their business in substantially the same manner as that of the American Express Company, in that they confine their operations to selling and issuing money orders, and this business is conducted through authorized agents located principally in retail establishments, such as drug and grocery stores. American Express Company, which is exempt from the operation of the Act is engaging in the same activity.

5. The plaintiffs Doud, McDonald and Carlson, in recognition of the fact that they cannot operate legally under the Illinois Act, have established to date only one agency in this state although they have 120 in operation in northern Indiana where in their first year of operation they sold over $1,400,000 of money orders.

6. On the partnership money order forms the word "Licensed" appears at the bottom of the form in small letters opposite the word "Bonded". Said plaintiffs intended the expression "Licensed" to refer to a license from Checks, Inc. to handle Bondified money orders, and no evidence was introduced to show that the public was enticed into purchasing the plaintiffs' Bondified money orders by reason of the belief that the plaintiffs were licensed under the Illinois Community Currency Exchange Act.

7. The "operator contract" through which the plaintiffs are authorized to deal in Bondified checks and money orders, contains numerous controls and standards which Bondified Systems and its agents must meet and is much more than a naked license agreement. The plaintiffs have adopted a number of precautionary measures to insure protection of their customers.

8. American Express Company is an aggregation of individuals operating under a joint stock company plan. It is not a corporation. It sells and issues money orders in the City of Chicago, Illinois, through operators of drug and grocery stores. The evidence tends to show that American Express Company has no license to transact business in this state, is not subject to any form of state regulation, does not always require bonds of its agents as

plaintiffs do, and may even be able successfully to avo service of process by the courts of this state.

9. The plaintiff Derrick, who has an established Bond fied agency, is prohibited by [illegible]38 of the Act from sellin Bondified money orders in connection with his drug sto business, but he was permitted to sell American Expres Company money orders at the same store in 1948 and 194

10. The defendants concede that plaintiffs will be re quired to qualify under the Act and that they will enforc it against the plaintiffs when the latter violate it, which ad mittedly they are doing now. The defendant officials wer not apprised of a violation until shortly before plaintiff filed their complaint. To operate as a currency exchang without first securing a license subjects the plaintiffs to criminal prosecution and the penalty of a heavy fine or im prisonment, or both. In the meantime, the plaintiffs, pre sumably to avoid further possible penalties, are withhol ing establishment of additional agencies and losing the op portunity to conduct and expand their business. The plain tiffs have demonstrated the imminence of irreparable in jury.

Conclusions of Law.

1. The Court has jurisdiction of the parties and of th subject matter of this proceeding.

2. The Illinois Community Currency Exchange Act es tablishes a system of regulation of currency exchange throughout the state and requires, among other things, a li cense, the payment of fees, bonds, insurance, annual re ports, etc. The provisions of the Act apply t all community currency exchanges as that term is define in [illegible]31 of the Act which defines "Community Currency Ex change" as "any person, firm, association, partnership o corporation * * * engaged at a fixed and permanent plac of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders, or any other evidence of money acceptable to such community cur rency exchange, for a fee or service charge or other con sideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any othe money orders (other than United States Post Office money orders, American Express Company money orders, Posta

Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services".

3. Plaintiffs are unable to operate lawfully under the Act since § 38 thereof prohibits a currency exchange from being conducted as a part of another business; and even though they could overcome this obstacle they would be required to obtain a separate license for each agency and to pay the numerous license and inspection fees for each outlet. American Express Company, on the other hand, is relieved of all these burdens.

4. The use by the plaintiffs of the word "Licensed" is clearly not of such a nature as to bar the plaintiffs from relief.

5. The trademark license under which the plaintiffs operate provides for supervisory control of the product or services and is valid.

6. It is the inclusion, in the definition of the term "Community Currency Exchange" of "one who, though not engaged in the check cashing business ordinarily designated by that term is "engaged in the business of selling or issuing money orders", coupled with the exemption of a company engaged in that very business which, it seems to us, renders the statute discriminatory and unconstitutional as applied to the plaintiffs or to any other person or firm engaged in the business of selling or issuing money orders but not in the ordinary business of a currency exchange. The Illinois Community Currency Exchange Act as applied to the plaintiffs violates the equal protection clause of the Fourteenth Amendment.

7. The plaintiffs are entitled to the issuance of an injunction restraining the defendants from enforcing the provisions of the Illinois Community Currency Exchange Act against the plaintiffs so long as they engage only in the business of issuing and selling money orders.

Elmer J. Schnackenberg, Julius J. Hoffman, Walter J. LaBuy.

Dated, June 18, 1956.

In the United States District Court, Northern District of Illinois, Eastern Division

Civil Action No. 53 C 2322

George W. Dovd, Donald Q. McDonald, and J. Wesley Carlson, doing business as Bondified Systems, and Eugene Derrick, Plaintiffs,

vs.

Orville Hodge, Auditor of Public Accounts of the State of Illinois, Latham Castle, Attorney General of the State of Illinois, and John Gutknecht, State's Attorney of Cook County, Illinois, Defendants.

Before Elmer J. Schnackenberg, Judge of the United States Court of Appeals for the Seventh Circuit, Walter J. LaBuy and Julius J. Hoffman, District Judges.

Decree—June 18, 1956

This matter having come on to be heard before the court of three judges convened pursuant to 28 U. S. C. § 2281 and § 2284, upon the amended complaint filed by plaintiffs and the answers filed by the defendants, and the Court having heard evidence presented at the trial and having considered the same, having heard arguments and received briefs of counsel, and having examined the opinion of the Supreme Court with respect to the jurisdiction of the court and being fully advised.

It is ordered, adjudged and decreed that the defendants be, and they are hereby, enjoined from enforcing the provisions of the Illinois Community Currency Exchanges Act (§ 30 to 56.3, Chap. 16½, Illinois Revised Statutes) against the plaintiffs so long as they engage only in the business of issuing and selling money orders; and

It is further ordered that the plaintiffs recover from the defendants their costs herein, including the costs adjudged by the Supreme Court, for which let execution issue.

Enter:

Elmer J. Schnackenberg, Julius J. Hoffman, Walter J. LaBuy.

Dated, June 18, 1956

APPENDIX B

THE OPINIONS BELOW

Opinion of the United States District Court, Northern District of Illinois, Eastern Division, Civil Action No. 53 C 2322, *George W. Doud, et al.* v. *Orville Hodge*, Auditor of Public Accounts, etc., *et al.* (127 F. Supp. 853.)

February 4th, 1955

Before Elmer J. Schnackenberg, *Judge* of the United States Court of Appeals for the Seventh Circuit, and Julius J. Hoffman and Walter J. LaBuy, *District Judges*.

Schnackenberg, *Circuit Judge*. Plaintiffs, George W. Doud, Donald Q. McDonald and J. Wesley Carlson, as a partnership, and plaintiff, Eugene Derrick, agent of said partnership, by their amended complaint seek an injunction restraining the defendants, who are the Auditor of Public Accounts and the Attorney General of the State of Illinois, and the State's Attorney of Cook County, Illinois, from enforcing against said plaintiffs the provisions of the Illinois Community Currency Exchange Act,[1] upon the ground that said act is unconstitutional in that, according to plaintiffs, it denies them the equal protection of the law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Defendants filed answers and evidence was adduced by the respective parties.

An *amicus curiae* makes the contention (which has been adopted by the defendants) that the court has no jurisdiction to decide the question of constitutionality raised by plaintiffs because that question has never been presented to the Illinois Supreme Court, and hence the federal courts are without jurisdiction to determine it in the first instance, citing *Spector Motor Co.* v. *McLaughlin*, 323 U. S. 101, at 104, and *Federation of Labor* v. *McAdory*, 325 U. S. 450, at 471:

[1] Secs. 30 to 56.3 inclusive, Chap. 16½, Ill. Rev. Stat. 1953.

The amended complaint alleges that the partnership is organized for the purpose of, intends to engage, and has been engaging, not in the ordinary business of a currency exchange, but exclusively in the business of selling and issuing money orders under the firm name "Bondified Systems" in the Counties of DuPage and Cook and other portions of the State of Illinois. That business is to be conducted through agents, who are principally persons engaged in operating retail drug, hardware and grocery stores.

It is also alleged by plaintiffs and proved by the evidence, that on August 11, 1953, they appointed the plaintiff Derrick (who conducts a drug store) as their agent for the sale to the public of postcard checks and money orders issued by the partnership firm.

Section 1 of the Act [2] provides in part:

> "§ 1. For the purposes of this Act: 'Community currency exchange' means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money order, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such business, or engaged in performing any one or more of the foregoing services."

Section 8 of said Act [3] provides in part:

> "§ 8. A community • • • currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. • • •"

---

[2] Sec. 31, Chap. 16½, *ibid.*

[3] Sec. 38, Chap. 16½, *ibid.*

Plaintiffs contend that the exemption of those engaged in the business of selling or issuing American Express Company money orders is "wholly unwarranted" and is "highly discriminatory."

Plaintiffs also contend that "the arbitrary, discriminatory character of" the Act "as applied to plaintiffs * * * engaged exclusively in the business of selling and issuing money orders is further illustrated by the exemption from said statute of sale of American Express Company money orders by persons, firms, and corporations whose principal business consists in the operation of retail drug, hardware and grocery stores." This contention means briefly that plaintiffs' agent cannot sell and issue money orders as an adjunct to his drug store business while an agent of American Express, its direct competitor, can do just that.

The admissions in the pleadings establish that American Express Company is an aggregation of individuals operating under a joint company plan. It is not a corporation. It sells and issues money orders in the City of Chicago, Illinois, through operators of drug and grocery stores. It does not operate under any franchise granted by the State of Illinois and is not subject to regulation by any regulatory body thereof.

It thus appears that plaintiffs intend to engage in only one phase of the activities in which a community currency exchange may engage if licensed under the Act in question; that is, the business of selling or issuing money orders under their name. It also appears that American Express Company, which is exempt from the operation of the Act, is engaging in the same activity. It further appears that plaintiffs intend to; and American Express Company does, engage in this busjness through agents operating retail stores of the same types.

Plaintiffs argue that "it is the function and duty of this court to determine whether or not the Act in question violates the Fourteenth Amendment as applied to these plaintiffs."

On the other hand the *amicus curiae* and the defendants argue that it is not the function and duty of this court to determine that question unless and until plaintiffs secure an answer to that question from the Illinois Supreme Court.

It would seem that a plausible argument could be made, on behalf of plaintiffs, to the Illinois Supreme Court, predicated upon the fact that in view of the identical similarity of the business conducted by American Express Company, which is exempt from regulation under the Act, and that in which plaintiffs intend to engage and which on its face the Act says must be regulated by the State, is an arbitrary discrimination. If this argument were made to and accepted as valid by the Illinois Supreme Court, it might well grant to plaintiffs the very relief which they are seeking in this court and hence a suit of this character would be unnecessary. A three judge court, in a case involving a similar situation arising under the currency exchange act of the State of Wisconsin, held that the exemption of American Express Company rendered the statute discriminatory and unconstitutional as applied to the plaintiff in that case. *Currency Services* v. *Matthews*, 90 F. Supp. 40, at 43, 45. However, there no question was raised as to the federal court's jurisdiction, such as the question which now confronts us.

Whether in plaintiffs' situation the Illinois Supreme Court would hold the exemption of American Express Company from the application of the Act constitutional or unconstitutional we do not know. Not having that preseience and being unwilling to guess as to how the Illinois court would decide this question when and if it were presented to it, we have no jurisdiction to make that decision ourselves. Hence we cannot decide the constitutional question presented in the absence of such authoritative determination by the Illinois Supreme Court.

Plaintiffs seem to argue that in *McDougall* v. *Lueder*, 389 Ill. 141, the Illinois Supreme Court has already, in effect, decided that the Illinois Act, as to plaintiffs, does not violate the equal protection of the law provision of the federal constitution, and, accordingly, this court should grant appropriate relief, and that no further state court decision is necessary. In so urging, plaintiffs overlook the plain distinction between the business of the plaintiffs in the *McDougall* case and the business in which they (plaintiffs herein) intend to engage. That distinction plaintiffs themselves have made and emphasized. The *McDougall* plaintiffs were engaged in the general broad activities of a currency exchange, as distinguished from

the limited activities in which plaintiffs herein intend to engage. As we have seen, American Express Company operates only that part of a general currency business which is limited to the issuing and selling of money orders. It does it, without a license issued under the Act, within the same limits plaintiffs wish to operate without being licensed. The Illinois Supreme Court might find that to deny plaintiffs that right would be to deprive them of the same protection which American Express Company enjoys under the law. It well may be that the Illinois Supreme Court would hold the exemption of American Express Company unconstitutional as applied to persons in the position of these plaintiffs and at the same time adhere to its holding that the exemption is constitutional as applied to persons in the position of the *McDougall* plaintiffs. See: *Roberts & Schaefer Co.* v. *Emmerson*, 271 U. S. 50, at 54 (affirming 313 Ill. 137). The federal courts, before passing on the question urged by the present plaintiffs, must wait until the Illinois Supreme Court has spoken in answer to that same question.

It is therefore necessary that the amended complaint be dismissed for want of jurisdiction. Counsel for defendants will present an order accordingly within five days.

DISSENTING OPINION

HOFFMAN, *District Judge*, dissenting.

I am aware of no decision in which the Supreme Court of the United States has held that a federal district court must, or even should, refuse to entertain a suit under the circumstances present here. The jurisdiction of this court is properly invoked. The plaintiffs, supported by the decision of another three judge court in *Currency Services, Inc.* v. *Matthews*, 90 F. Supp. 40 (W. D. Wis. 1950), have raised a substantial federal constitutional question. The application of the challenged statute to the plaintiffs is unquestioned, and the Supreme Court of Illinois has already upheld the exemption of American Express Company without suggesting that its decision in any way rested on the nature of the activities of the plaintiffs in the decided case. [*McDougall* v. *Lueder*, 389 Ill. 141 (1945)].

The balance between state-federal relations is not so delicate that it would be upset by this court's consideration of the merits of the plaintiffs' claim that the Illinois Currency Exchange Act has deprived them of the equal protection of the laws.

I would grant the prayer of the plaintiffs' amended complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter coming on to be heard before a three-judge court convened pursuant to 28 U. S. C. 2281 and 2284, upon the amended complaint filed by plaintiffs and the answers filed by the defendants; and the court having heard evidence presented in open court and having considered all such evidence heretofore taken, as well as all exhibits offered and received in evidence, and the matter having been argued by counsel, and the court having heard the statements and arguments of counsel and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

The court finds:

(1) This is an action in equity brought by plaintiffs pursuant to the provisions of Sections 2281 and 2284 of Title 28 U. S. C. seeking a permanent injunction to enjoin Orville Hodge, Auditor of Public Accounts of the State of Illinois, Latham Castle, Attorney General of the State of Illinois, and John Gutknecht, State's Attorney of Cook County, Illinois, from enforcing against the plaintiffs the provisions of the Illinois Community Currency Exchange Act, Sections 30 to 56.3 of Chapter 16½ of the Illinois Revised Statutes, 1953, and also praying that said Act be declared unconstitutional and void in its application to plaintiffs on the ground that it denies the plaintiffs the equal protection of the law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(2) The amount in controversy herein exceeds the sum of $3,000, exclusive of interest and costs.

(3) The plaintiffs George W. Dowd, Donald O. McDonald and J. Wesley Carlson constitute a partnership which is organized for the purpose of, intends to engage, and has been engaging, not in the ordinary business of a currency exchange, but exclusively in the business of selling and issuing money orders under the firm name "Bondified Systems", in the Counties of DuPage and Cook and other portions of the State of Illinois. That business is to be conducted through agents who are principally persons engaged in operating retail drug, hardware and grocery stores.

(4) On August 11, 1953, said plaintiffs appointed the plaintiff Derrick (who conducts a drug store) as their agent for the sale to the public of post card checks and money orders issued by the partnership firm.

(5) American Express Company is an aggregation of individuals operating under a joint stock company plan. It is not a corporation. It sells and issues money orders in the City of Chicago, Illinois, through operators of drug and grocery stores. It does not operate under any franchise granted by the State of Illinois and is not subject to regulation by any regulatory body thereof.

(6) It thus appears that plaintiffs intend to engage in only one phase of the activities in which a currency exchange may engage if licensed under the Act in question; that is the business of selling or issuing money orders under their name. It also appears that American Express Company, which is exempt from the operation of the Act, is engaging in the same activity.

(7) It further appears that plaintiffs intend to, and American Express Company does, engage in this business through agents operating retail stores of the same types.

(8) American Express Company operates only that part of a general currency exchange business which is limited to the issuing and selling of money orders. It does it without a license issued under the Act within the same limits in which plaintiffs wish to operate without being licensed.

CONCLUSIONS OF LAW.

1. Plaintiffs' application for a permanent injunction should be denied and the amended complaint should be dismissed for want of jurisdiction at plaintiffs' costs.

2. This court cannot decide the constitutional question presented in the absence of an authoritative determination by the Illinois Supreme Court that the exemption of American Express Company is constitutional as applied to persons in the position of these plaintiffs.

Enter:

ELMER J. SCHNACKENBERG,
Judge of the United States Court of Appeals.

WALTER J. LA BUY,
Judge of the United States District Court.

JULIUS J. HOFFMAN,
Judge of the United States District Court.

Dated: February 9th, 1955.

ORDER OF DISMISSAL FOR WANT OF JURISDICTION.

This action has been heard by this court, Elmer J. Schnackenberg, *Circuit Judge* Presiding, and Walter J. La Buy and Julius J. Hoffman, *District Judges*, sitting. The Court has heard and considered the evidence and arguments of counsel and has read and considered the briefs. It is fully advised in the premises.

Thereupon It Is Ordered in accordance with the views expressed in this Court's opinion, Schnackenberg, *J.* and LaBuy, *J.* concurring and Hoffman, *J.* dissenting, that the plaintiffs' action be and it is dismissed for want of this Court's jurisdiction.

Enter:

ELMER J. SCHNACKENBERG,
Judge.

WALTER J. LABUY,
Judge.

Dated: February 9, 1955.

APPENDIX C

Currency Exchange Law

"An Act in relation to the definition, licensing and regulation of community currency exchanges and ambulatory currency exchanges, and the operators and employees thereof, and to make an appropriation therefor, and to provide penalties and remedies for the violation thereof." (Approved June 30, 1943, in force October 1, 1943, as amended.) (Ill. Rev. Stat. Ch. 164, Pars. 30-56.3.)

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section .01. The General Assembly has found and declares: that the community currency exchange business, as hereinafter defined in Section 1, has become so widespread since the bank holiday in 1933, and so extensively and intimately integrated with the financial institutions of this State that it is affected with a public interest and should be licensed and regulated as a business affecting the convenience, general welfare, and economic interest of the people of this State;

that no community currency exchange should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act;

that the number of community currency exchanges should be limited in accordance with the needs of the communities they are to serve, and in accordance with the provisions of this Act;

that there has arisen also the ambulatory currency exchange business, as hereinafter defined in Section 1, which has engaged heretofore in unlicensed competition with the licensed community currency exchange business;

that it is in the public interest to promote and foster the community currency exchange business and to assure the financial stability thereof;

that the operations of the ambulatory currency exchange business have enabled it to appropriate the most profitable function of the community currency exchange business

without incurring the expenses of, or subjecting itself to the regulations imposed upon the community currency exchange business, and to secure thereby an unfair advantage; that there has resulted therefrom an unfair and ruinous competition to the licensed community currency exchange business;

that the nature of the ambulatory currency exchange business is such as to render it hazardous and dangerous to the public safety and security;

that the public welfare demands that no ambulatory currency exchange business should be operated without a license, or otherwise than in accordance with the regulations provided in, or to be provided pursuant to this Act:

Section 1. For the purposes of this Act: "Community currency exchange" means any person, firm, association, partnership or corporation, except banks incorporated under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged at a fixed and permanent place of business, in the business or service of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money acceptable to such community currency exchange, for a fee or service charge or other consideration, or engaged in the business of selling or issuing money orders under his or their or its name, or any other money orders (other than United States Post Office money orders, American Express Company money orders, Postal Telegraph Company money orders, or Western Union Telegraph Company money orders), or engaged in both such businesses, or engaged in performing any one or more of the foregoing services.

"Ambulatory Currency Exchange" means any person, firm, association, partnership or corporation, except banks organized under the laws of this State and National Banks organized pursuant to the laws of the United States, engaged in one or both of the foregoing businesses, or engaged in performing any one or more of the foregoing services, at any location other than that of a fixed and permanent place of business of his, their or its own.

"Auditor" means the Auditor of Public Accounts.

Nothing in this Act shall be held to apply to any person, firm, association, partnership, or corporation who is engaged primarily in the business of transporting for hire,

bullion, currency, securities, negotiable or non negotiable documents, jewels or other property of great monetary value and who in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money directly for, or for the employees of and with the funds of and at a cost only to, the person, firm, association, partnership or corporation for whom he or it is then actually transporting such bullion, currency, securities, negotiable or non negotiable documents, jewels, or other property of great monetary value, pursuant to a written contract for such transportation and all incidents thereof, nor shall it apply to any person, firm, association, partnership or corporation engaged in the business of selling tangible personal property at retail who, in the course of such business and only as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

Sec. 2. No person, firm, association, partnership or corporation shall engage in the business of a community currency exchange or in the business of an ambulatory currency exchange without first securing a license to do so from the Auditor.

Any person, firm, association, partnership or corporation issued a license to do so by the Auditor shall have authority to operate a community currency exchange or an ambulatory currency exchange, as defined in Section 1 hereof.

No license shall be issued for the conduct of an ambulatory currency exchange on any public street or highway. An ambulatory currency exchange shall be required to and shall secure a license or licenses for the conduct of its business at each and every location served by it, as provided in Section 4 hereof. No license issued for the conduct of its business at one location shall authorize the conduct of its business at any other location.

Any person, firm, association, partnership or corporation that violates this section shall be fined not less than $500.00 nor more than $1,000.00 or imprisoned in the county jail for not more than one year, or both, and the Attorney General or the State's Attorney of the county in which the violation occurs shall file a complaint in the Circuit Court of the county to restrain the violation.

Sec. 3. No community or ambulatory currency exchange shall be permitted to accept money or evidences of money

as a deposit to be returned to the depositor or upon the depositor's order; and no community or ambulatory currency exchange shall be permitted to act as bailee or agent for persons, firms, partnerships, associations or corporations to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof, and deliver such money or proceeds of evidence of money upon request and direction of such owner or owners; provided, that nothing contained herein shall prevent a community or an ambulatory currency exchange from obtaining state automobile and city vehicle licenses for a fee or service charge, or from rendering a photostat service, or from rendering a notary service either by the proprietor of the currency exchange or any one of its employees, authorized by the State of Illinois to act as a notary public, or from selling travelers cheques obtained by the currency exchange from a banking institution under a trust receipt, or from issuing money orders or from accepting for payment local utility bills; provided, further, that in accepting any such payment the community or ambulatory currency exchange shall not be deemed to act as agent for the local utility, nor shall such community or ambulatory currency exchange be authorized to receipt for such payment in the name, or on behalf, of such utility.

Sec. 3.1. Nothing in this Act shall prevent a currency exchange from rendering State or Federal income tax service; nor shall the rendering of such service be considered a violation of this Act if such service be rendered either by the proprietor or any of his employees.

Sec. 4. Application for such license shall be in writing under oath and in the form prescribed and furnished by the Auditor. Each application shall contain the following:

(a) The full name and address (both of residence and place of business) of the applicant, and if the applicant is a partnership or association, of every member thereof, and the name and business address if the applicant is a corporation;

(b) The county and municipality, with street and number, if any, where the community currency exchange is to be conducted, if the application is for a community currency exchange license;

(c) If the application is for an ambulatory currency exchange license, the names and addresses of the plants or

businesses at the location or locations to be served by it; and

(d) The applicant's occupation or profession; a detailed statement of his business experience for the ten years immediately preceding his application; a detailed statement of his finances; his present or previous connection with any other currency exchange; whether he has ever been involved in any civil or criminal litigation, and the material facts pertaining thereto; whether he has ever been committed to any penal institution or admitted to an institution for the care and treatment of mentally ill persons; and the nature of applicant's occupancy of the premises to be licensed where the application is for a community currency exchange license. If the applicant is a partnership, the information specified herein shall be required of each partner. If the applicant is a corporation, the said information shall be required of each officer and director thereof.

Such application shall be accompanied by a fee of $25.00 which fee shall be for the cost of investigating the applicant. When the application for a community currency exchange license has been approved by the Auditor and the applicant so advised, an additional sum of $50.00 as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Auditor by the applicant; provided, that the license fee for an applicant applying for such a license after July 1st of any year shall be $25.00 for the balance of such year.

When the application for an ambulatory currency exchange license has been approved by the Auditor, and such applicant so advised, such applicant shall pay an annual license fee of $10.00 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such a license after July 1st of any year shall be $5.00 for the balance of such year for each and every location to be served by such applicant. An approved applicant shall not be required to pay the initial investigation fee of $25.00 more than once. Such an approved applicant, when applying for a license with respect to a particular location, shall file with the Auditor, at the time of filing an application, a letter or memorandum, which shall be in writing and under oath, signed by the owner or authorized representative of the place of business where service is to be rendered; such letter or memorandum

shall contain a statement that such service is desired, and that the person signing the same is authorized so to do.

Sec. 4.1. Upon receipt of an application for a license for a community currency exchange, the Auditor shall investigate the need of the community for the establishment of a community currency exchange at the location specified in the application.

"Community", as used in this Act, means a locality where there may or can be available to the people thereof the services of a community currency exchange reasonably accessible to them. If the issuance of a license to engage in the community currency exchange business at the location specified, will not promote the convenience and advantage of the community in which the business of the applicant is proposed to be conducted, then the application shall be denied.

Sec. 4.2. Whenever the ownership of any currency exchange, theretofore licensed under the provisions of this Act, shall be held or contained in any estate subject to the control and supervision of any Administrator, Executor, Guardian or Conservator appointed, approved or qualified by any Court of the State of Illinois having jurisdiction so to do, such Administrator, Executor, Guardian or Conservator, may, upon the entry of an order by such Court granting leave to continue the operation of such currency exchange, apply to the Auditor of Public Accounts for a license under the provisions of this Act. When any such Administrator, Executor, Guardian, or Conservator shall apply for a currency exchange license pursuant to the provisions of this Section, and shall otherwise fully comply with all of the provisions of this Act relating to the application for a currency exchange license, the Auditor may issue to such applicant a currency exchange license. Any currency exchange license theretofore issued to a currency exchange, for which an application for a license shall be sought under the provisions of this Section, if not previously surrendered, lapsed, or revoked, shall be surrendered, revoked or otherwise terminated before a license shall be issued pursuant to application made therefor under this Section.

Sec. 5. Before any license shall be issued to a community currency exchange the applicant shall file annually with and have approved by the Auditor a surety bond, issued by

a bonding company or insurance company authorized to do business in this State in the principal sum of $3,000.00. Such bond shall run to the Auditor and shall be for the benefit of any creditors of such currency exchange for any liability incurred by the currency exchange on any money orders issued or sold by the currency exchange and for any liability incurred by the currency exchange for any sum or sums due to any payee or endorsee of any check, draft or money order left with the currency exchange for collection, and for any liability incurred by the currency exchange in connection with the rendering of any of the services referred to in Section 3 of this Act.

If after the expiration of one year from the issuance of the license the Auditor shall determine that the average amount of such liability during said year has exceeded the sum of $4,000.00 and has been less than $5,000.00, the Auditor shall require the licensee to furnish a bond for the ensuing year to be approved by the Auditor in the principal sum of $4,000.00. If such average amount is in excess of $5,000.00 the bond shall be for an additional principal sum of $1,000.00 for each $1,000.00 or fraction thereof in excess of the original $5,000.00; however, the maximum amount of such bond shall not exceed the principal sum of $25,000.00.

Sec. 6. Every applicant for a license hereunder shall, after his application for a license has been approved, file with and have approved by the Auditor, a policy or policies of insurance issued by an insurance company or indemnity company authorized to do business under the laws of this State, which shall insure the applicant against loss by burglary, larceny, robbery, forgery or embezzlement, in a principal sum as hereinafter provided; if the average amount of cash and liquid funds to be kept on hand in the office of the community currency exchange during the year will not be in excess of $2,500 the policy or policies shall be in the principal sum of $2,500. If such average amount will be in excess of $2,500, the policy or policies shall be for an additional principal sum of $500 for each $1,000 or fraction thereof of such excess over the original $2,500, provided that the maximum amount of such insurance shall in no event exceed the principal sum of $35,000.00. From time to time the Auditor may determine the amount of cash and liquid funds on hand in the office of any community currency exchange and shall require the licensee to submit ad

ditional policies if the same are determined to be necessary in accordance with the requirements of this section.

Any such policy or policies, with respect to forgery, may carry a condition that the community currency exchange assumes the first $50 of each claim thereunder.

Sec. 7. Each community currency exchange shall have, at all times, a minimum sum of $3,000 of its own cash funds available for the uses and purposes of its business and said minimum sum shall be exclusive of and in addition to funds received for exchange or transfer; and in addition thereto each such licensee shall at all times have on hand an amount of liquid funds sufficient to pay on demand all outstanding money orders issued by it.

In the event a receiver is appointed in accordance with Section 15.1 of this Act, and the Auditor determines that the business of the currency exchange should be liquidated, and if it shall appear that the said minimum sum was not on hand or available at the time of the appointment of the receiver, then the receiver shall have the right to recover in any court of competent jurisdiction from the owner or owners of such currency exchange, or from the stockholders and directors thereof if such currency exchange was operated by a corporation, said sum or that part thereof which was not on hand or available at the time of the appointment of such receiver. Nothing contained in this section shall limit or impair the liability of any bonding or insurance company on any bond or insurance policy relating to such community currency exchange issued pursuant to the requirements of this Act, nor shall anything contained herein limit or impair such other rights or remedies as the receiver may otherwise have at law or in equity.

Sec. 8. A community or an ambulatory currency exchange shall not be conducted as a department of another business. It must be an entity, financed and conducted as a separate business unit. This shall not prevent a community or an ambulatory currency exchange from leasing a part of the premises of another business for the conduct of this business on the same premises; provided, that no community currency exchange shall be conducted on the same premises with a business whose chief source of revenue is derived from the sale of alcoholic liquor for consumption on the premises; provided, further, that no community currency exchange hereafter licensed for the first time shall

share any room with any other business, trade or profession nor shall it occupy any room from which there is direct access to a room occupied by any other business, trade or profession.

Sec. 9. No community or ambulatory currency exchange shall issue tokens to be used in lieu of money for the purchase of goods or services from any enterprise.

Sec. 10. The applicant, and its officers and directors, if a corporation, shall be vouched for by two reputable citizens of this State setting forth that the individual mentioned is (a) personally known to them to be trustworthy and reputable, (b) that he has business experience qualifying him to competently conduct, operate, own or become associated with a currency exchange, (c) that he has a good business reputation and is worthy of a license. Thereafter, the Auditor shall, upon approval of the application filed with him, issue to the applicant qualifying under this Act, a license to operate a currency exchange. If it is a license for a community currency exchange, the same shall be valid only at the place of business specified in the application. If it is a license for an ambulatory currency exchange, it shall entitle the applicant to operate only at the location or locations specified in the application, provided the applicant shall secure separate and additional licenses for each of such locations. Such licenses shall remain in full force and effect, until they are surrendered by the licensee, or revoked, or expire, as herein provided. If the Auditor shall not so approve, he shall not issue such license or licenses and shall notify the applicant of such denial, retaining the $25.00 investigation fee to cover the cost of investigating the applicant. The Auditor shall approve, or deny every application hereunder within ninety days from the filing thereof; except that in respect to an application by an approved ambulatory currency exchange for a license with regard to a particular location to be served by it, the same shall be approved or denied within twenty days from the filing thereof.

No application shall be denied unless the applicant has had notice of a hearing on said application and an opportunity to be heard thereon. If the application is denied, the Auditor shall, within twenty days thereafter prepare and keep on file in his office a written order of denial thereof, which shall contain his findings with respect thereto and

the reasons supporting the denial, and shall send by United States mail a copy thereof to the applicant at the address set forth in the application, within five days after the filing of such order. A review of any such decision may be had as provided in Section 22.01 of this Act.

Sec. 10.1. For the purposes of this Act, the Auditor, and the hearing officer, as hereinafter provided, shall have power to require by subpoena the attendance and testimony of witnesses, and the production of all documentary evidence relating to any matter under hearing pursuant to this Act, and shall issue such subpoenas at the request of any interested party. The hearing officer may sign subpoenas in the name of the Auditor.

The Auditor may, in his discretion, direct that any hearing pursuant to this Act, shall be held before a competent and qualified agent of the Auditor, whom the Auditor shall designate as the hearing officer in such matter. The Auditor, and the hearing officer, are hereby empowered to, and shall, administer oaths and affirmations to all witnesses appearing before them. The hearing officer, upon the conclusion of the hearing before him, shall certify the evidence to the Auditor.

Any Circuit Court of this State, within the jurisdiction of which such hearing is carried on, may, in case of contumacy, or refusal of a witness to obey a subpoena, issue an order requiring such witness to appear before the Auditor, or the hearing officer, or to produce documentary evidence, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Sec. 11. Such license, if issued for a community currency exchange, shall state the name of the licensee and the address at which the business is to be conducted. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. If issued for an ambulatory currency exchange, it shall so state, and shall state the name and office address of the licensee, and the name and address of the location or locations to be served by the licensee, and shall not be transferable and assignable.

Sec. 12. If the Auditor shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the Audi-

tor shall be filed by the licensee within thirty (30) days after written demand therefor upon the licensee by the Auditor.

Sec. 13. No more than one place of business shall be maintained under the same license, but the Auditor may issue more than one license to the same licensee upon compliance with the provisions of this Act governing an original issuance of a license, for each new license.

Whenever a licensee shall wish to change the name or place of business as originally set forth in his license, he shall give written notice thereof to the Auditor and if the change is approved by the Auditor he shall attach to the license, in writing, a rider stating the new name or the new address or location of the community currency exchange.

Every application for a change of location of a community currency exchange shall be treated by the Auditor with respect to the approval or disapproval of the proposed location, in the same manner as is otherwise provided in this Act for the treatment of proposed locations as contained in original applications for community currency exchange licenses; and if any fact or condition then exists with respect to the application for change of location, which fact or condition would otherwise authorize denial of an original application for a community currency exchange license because of the proposed location, then such application for change of location shall not be approved.

Sec. 13.1. Whenever two or more licensees shall desire to consolidate their places of business, they shall make application for such consolidation to the Auditor upon a form provided by him. This application shall state: (a) the name to be adopted and the location at which the business shall be located, which name and location shall be the same as one of the consolidating licensees; (b) that the owners, or all partners, or all stockholders, as the case may be, of the licensees involved in the contemplated consolidation, have approved the application; (c) a certification by the secretary, if any of the licensees be corporations, that the contemplated consolidation has been approved by all of the stockholders at a properly convened stockholders' meeting; (d) other relevant information the Auditor may require. Simultaneously with the approval of the application by the Auditor; the licensee or licensees who will cease doing business shall: (a) surrender their license or licenses to the

Auditor; (b) transfer all of their assets and liabilities to the licensee continuing to operate by virtue of the application; (c) apply to the Secretary of State, if they be corporations, for surrender of their corporate charter in accordance with the provisions of "The Business Corporation Act", filed July 13, 1933, as amended.

An application for consolidation shall be approved or rejected by the Auditor within 30 days after receipt by him of such application and supporting documents required thereunder.

Such consolidation shall not affect suits pending in which the surrendering licensees are parties; nor shall such consolidation affect causes of action nor the rights of persons in particular; nor shall suits brought against such licensees in their former names be abated for that cause.

Nothing contained herein shall limit or prohibit any action or remedy available to a licensee or to the Auditor under Sections 15, 15.1 or 15.2 of this Act.

Sec. 14. Every licensee shall, on or before November 15, pay to the Auditor the annual license fee or fees for the next succeeding calendar year and shall at the same time file with the Auditor the annual report required by Section 16 of this Act, and the annual bond or bonds, and the insurance policy or policies as and if required by this Act. The annual license fee for each community currency exchange shall be $50.00. The annual license fee for each location served by an ambulatory currency exchange shall be $10.00.

Sec. 15. The Auditor may, upon ten (10) days notice to the licensee by United States mail directed to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard prior to such action, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the required bond or bonds or insurance policy or policies or to comply with any order, decision, or finding of the Auditor made pursuant to this Act; or that

(b) The licensee has violated any provision of this Act or any regulation or direction made by the Auditor under this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Auditor in refusing the issuance of the license; or that

(d) The licensee has not operated the currency exchange licensed, for a period of sixty consecutive days, unless the licensee was prevented from operating during such period by reason of events or acts beyond the licensee's control.

The Auditor may revoke only the particular license or licenses for particular places of business or locations with respect to which grounds for revocation may occur or exist, or if he shall find that such grounds for revocation are of general application to all places of business or locations, or to more than one place of business or location operated by such licensee, he may revoke all of the licenses issued to such licensee or such number of licenses to which such grounds apply, as the case may be.

A licensee may surrender any license by delivering to the Auditor written notice that he, they or it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender, or affect the liability on his, their or its bond or bonds, or his, their or its policy or policies of insurance, required by this Act, or entitle such licensee to a return of any part of the annual license fee or fees.

Every license issued hereunder shall remain in force until the same shall expire, or shall have been surrendered or revoked in accordance with this Act, but the Auditor may on his own motion, issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Auditor in refusing originally the issuance of such license under this Act.

No license shall be revoked until the licensee has had notice of a hearing thereon and an opportunity to be heard. When any license is so revoked, the Auditor shall within twenty (20) days thereafter, prepare and keep on file in his office, a written order or decision of revocation which shall contain his findings with respect thereto and the reasons supporting the revocation and shall send by United States mail a copy thereof to the licensee at the address set forth in the license within five (5) days after the filing in his office

of such order, finding or decision. A review of any such order, finding or decision may be had as provided in Section 22.01 of this Act.

Sec. 15.1 If the Auditor determines that any licensee is insolvent or is violating this Act, he shall appoint a receiver, who shall, under his direction, for the purpose of the receivership, take possession of and title to the books, records and assets of every description of said community currency exchange. The Auditor shall require of the receiver such security as he deems proper and, upon appointment of the receiver, shall have published, once each week for four consecutive weeks in a newspaper having a general circulation in the community, a notice calling on all persons who have claims against the community currency exchange to present them to the receiver.

Within ten days after the receiver takes possession of the property, the licensee may apply to the Circuit Court of Sangamon County to enjoin further proceedings in the premises.

The receiver may operate the community currency exchange until the Auditor determines that possession should be restored to the licensee or that the business should be liquidated. If the Auditor determines that the business should be liquidated he shall direct the Attorney General to file a bill in the Circuit Court of the county in which such community currency exchange is located, in the name of the People of the State of Illinois, for the orderly liquidation and dissolution of the community currency exchange and for an injunction restraining the licensee or the officers and directors thereof from continuing the operation of said community currency exchange.

The receiver shall, thirty days from the day the Auditor determines that the business should be liquidated, file with the Auditor and with the clerk of such court as may have charge of the liquidation, a correct list of all creditors who have not presented their claims. The list shall show the amount of the claim after allowing all just credits, deductions and set offs as shown by the books of the currency exchange. These claims shall be deemed proven unless objections are filed by some interested party within the time fixed by the Auditor or court that has charge of the liquidation.

The Auditor may make a ratable dividend of the moneys collected by the receiver on all claims that have been proved to his satisfaction or adjudicated in a court of competent jurisdiction whenever moneys are available for distribution.

All unclaimed dividends shall be deposited with the Auditor to be paid out by him when proper claims therefor are presented to the Auditor, and the Auditor shall pay the same out of such sums or funds so deposited with him. After one year from the final dissolution of the currency exchange, the Auditor shall make a pro rata distribution thereof to those claimants who have accepted dividends until such claim or claims are paid in full, and if any of said monies shall then remain in his hands, the Auditor shall distribute same pro rata to the owner, owners or stockholders of the currency exchange. The Auditor shall deduct, from the funds so deposited with him the expense of distributing same.

Upon the order of a court of competent jurisdiction of the county wherein the community currency exchange is located, the receiver may sell, or compound, any bad or doubtful debt, and on like order may sell the personal property of the community currency exchange on such terms as the court approves. The receiver shall succeed to whatever rights or remedies the unsecured creditors of the currency exchange may have against the owner or owners, operators, stockholders, directors, or officers thereof, arising out of their claims against the currency exchange; provided, however, that nothing herein contained shall prevent such creditors from filing their claims in the liquidation proceedings. The receiver may enforce such rights or remedies in any court of competent jurisdiction.

At the close of the receivership, it shall be the duty of the receiver to turn over to the Auditor all books of account and ledgers of such currency exchange for preservation. All records of such receiverships heretofore and hereafter received by the said Auditor shall be held by him for a period of two years after the close of the receivership and at the termination of said two year period may then be destroyed.

All expenses of the receivership, including reasonable receiver's, solicitor's and attorney's fees, approved by the Auditor, shall be paid out of the assets of the community currency exchange; and all expenses of any preliminary or

other examinations into the condition of the community currency exchange or receivership, and all expenses incident to the possession and control of any property or records of the community currency exchange incurred by the Auditor shall be paid out of the assets of the community currency exchange. The foregoing expenses shall be paid prior to and ahead of all claims.

Upon the filing of a complaint by the Attorney General for the orderly liquidation and dissolution of a community currency exchange, as herein provided, all pending suits and actions upon unsecured claims against such currency exchange shall abate; provided, however, that nothing contained herein shall prevent such claimants from filing their claims in the liquidation proceeding. In the event a suit or an action is instituted or maintained by the receiver on any bond or policy of insurance issued pursuant to the requirements of this Act, the bonding or insurance company sued, shall not have the right to interpose or maintain any counterclaim based upon subrogation, or upon any express or implied agreement of, or right to, indemnity or exoneration, or upon any other express or implied agreement with, or right against, the currency exchange. Nothing herein contained shall prevent such bonding or insurance company from filing such claim in the liquidation proceeding.

Sec. 15.2. No community currency exchange shall determine its affairs and close up its business unless it shall first deposit with the Auditor an amount of money equal to the whole of its debts, liabilities and lawful demands against it, including the costs and expenses of this proceeding, and shall surrender to the Auditor its community currency exchange license, and shall file with the Auditor a statement of termination signed by the licensee of such community currency exchange, containing a pronouncement of intent to close up its business and liquidate its liabilities, and also containing a sworn list itemizing in full all such debts, liabilities and lawful demands against it. Corporate licensees shall attach to, and make a part of such statement of termination, a copy of a resolution providing for the determination and closing up of the licensee's affairs, certified by the secretary of such licensee and duly adopted at a shareholders' meeting by the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting. Upon the filing with the Auditor of a statement of termination the Auditor shall cause notice thereof to be published once

each week for three consecutive weeks in a public newspaper of general circulation published in the city or village where such community currency exchange is located, and if no newspaper shall be there published, then in a public newspaper of general circulation nearest to said city or village; and such publication shall give notice that the debts, liabilities and lawful demands against such community currency exchange will be redeemed by the Auditor on demand in writing made by the owner thereof, at any time within three years from the date of first publication. After the expiration of such three year period, the Auditor shall return to the person or persons designated in the statement of termination to receive such repayment and in the proportion therein specified, any balance of money then remaining in his possession, if any there be, after first deducting therefrom all unpaid costs and expenses incurred in connection with this proceeding. The Auditor shall receive for his services, exclusive of costs and expenses, two per cent of any amount up to $5,000.00, and one per cent of any amount in excess of $5,000.00, deposited with him hereunder by any one community currency exchange. Nothing contained herein shall affect or impair the liability of any bonding or insurance company on any bond or insurance policy issued under this Act relating to such community currency exchange.

Sec. 16. Each licensee shall annually, on or before the fifteenth day of November, file a report with the Auditor for the fiscal year period from October 1st through September 30th (which shall be used only for the official purposes of the Auditor) giving such relevant information as the Auditor may reasonably require concerning, and for the purpose of examining, the business and operations during the preceding fiscal year period of each licensed currency exchange conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Auditor and the Auditor may at any time and shall at least once in each year investigate the currency exchange business of any licensee and of every person, partnership, association and corporation who or which shall be engaged in the business of operating a currency exchange. For that purpose, the Auditor shall have free access to the offices and places of business and to such records of all such persons, firms, partnerships, associations,

and corporations and to the officers and directors thereof that shall relate to such currency exchange business. The Auditor may at any time, and shall at least, once a year, inspect the locations served by an ambulatory currency exchange, for the purpose of determining whether such currency exchange is complying with the provisions of this Act at each location served. The Auditor may require by subpoena the attendance of and examine under oath all persons whose testimony he may require relative to such business, and in such cases the Auditor, or any qualified representative of the Auditor whom the Auditor may designate, may administer oaths to all such persons called as witnesses, and the Auditor, or any such qualified representative of the Auditor, may conduct such examinations, and there shall be paid to the Auditor for each such examination a fee of $20.00 for each day or part thereof for each qualified representative designated and required to conduct the examination; provided, however, that in the case of an ambulatory currency exchange, such fee shall not be increased by reason of the number of locations served by it.

Sec. 17. Every licensee shall keep and use in his business such books, accounts and records as will enable the Auditor to determine whether such licensee is complying with the provisions of this Act and with the rules, regulation and directions made by the Auditor hereunder.

Sec. 18. The applicant for a community currency exchange license shall have a permanent address as evidenced by a lease of at least six months duration or other suitable evidence of permanency, and the license issued, pursuant to the application shall be valid only at that address or any new address approved by the Auditor.

Sec. 19. The Auditor may make and enforce such reasonable, relevant regulations, directions, orders, decisions and findings as may be necessary for the execution and enforcement of this Act and the purposes sought to be attained herein. All such regulations, directions, orders, decisions and findings shall be filed and entered by the Auditor in an indexed permanent book or record, with the effective date thereof suitably indicated, and such book or record shall be a public document. All regulations and directions, which are of a general character, shall be printed and copies thereof mailed to all licensees within ten (10) days after filing as aforesaid. Copies of all findings, or

ders and decisions shall be mailed to the parties affected thereby by United States mail within five (5) days of such filing.

Sec. 19.1. Whenever an ambulatory currency exchange shall be actively engaged at any place or station on a location licensed under this Act in the cashing of checks other than from within an armored vehicle, such currency exchange shall provide at least one armed guard at each such place or station in addition to the person or persons cashing checks.

Sec. 19.2. Before any license or renewal of license shall be issued for any location served by an ambulatory currency exchange, the applicant thereof shall file with and have approved by the Auditor a surety bond for each such location, issued by a bonding or insurance company, licensed to do business in this State, in the penal sum of $2,000.00. The bond shall be conditioned that the licensee serving the location shall comply with Section 19.1 of this Act and shall pay all lawful claims for money or other property loss, or bodily injury, suffered in the course and by reason of a holdup at such location, that shall occur at the time or times when said licensee failed to comply with said Section 19.1. Such bond shall run to the Auditor and shall inure to the benefit of any person or persons who shall establish a lawful claim or claims as aforesaid. The applicant shall have the right, at his, their, or its option, to file in lieu of the bond or bonds required by this section, a blanket surety bond, which he, they, or it shall have approved by the Auditor, issued by a bonding or insurance company, licensed to do business in this State, covering all the locations served and to be served by such applicant, in a penal sum of not to exceed $100,000.00, conditioned and payable as aforesaid, and specifying that the liability thereunder for each location shall be limited to $2,000.00.

Sec. 20. Every person having taken an oath in any proceeding or matter wherein an oath is required by this Act, who shall swear wilfully, corruptly or falsely in a matter material to the issue or point in question, or shall suborn any other person to swear as aforesaid, shall be guilty of perjury or subornation of perjury, as the case may be.

Sec. 21. Except as otherwise provided for in this Act, whenever the Auditor is required to give notice to any applicant or licensee, such requirement shall be complied with

if, within the time fixed herein, such notice shall be enclosed in an envelope plainly addressed to such applicant or licensee, as the case may be, at the address set forth in the application or license, as the case may be, United States postage fully prepaid, and deposited, registered, in the United States mail.

Sec. 22. Repealed by Act approved June 9, 1949; effective January 1, 1950.

Sec. 22.01. All final administrative decisions of the Auditor hereunder shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act," approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 1 of the "Administrative Review Act."

Sec. 22.02. Appeals from all final orders and judgments entered by a court in review of any final administrative decision of the Auditor hereunder may be taken directly to the Supreme Court by either party to the action in accordance with the provisions of the "Civil Practice Act" relating to appeals, and all existing and future amendments and modifications thereof and the rules adopted pursuant thereto.

Sec. 23. If any licensee or agent or employee of a licensee, fraudulently takes and secretes any money, note, bill, bond or other property belonging to another and in the possession and custody of such licensee as agent or otherwise, he shall be guilty of larceny and punished accordingly.

Sec. 24. Any person, firm, association, partnership or corporation who or which shall violate any provision of this Act for which no other penalty is herein prescribed shall, upon conviction, be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and each violation shall constitute a separate offense.

Sec. 25. Any community currency exchange in existence upon the date of the passage of this Act shall be approved by the Auditor as to location, if all other requirements set forth in this Act shall have been complied with.

Sec. 26. The sum of one hundred thousand dollars ($100,000.00), or so much thereof as may be necessary, is appropriated to the Auditor of Public Accounts for the purpose of administering the provisions of this Act.

Sec. 27. Nothing contained in this Act shall be construed so as to limit the power of municipalities, to license and tax community currency exchanges, and to regulate their location and operation in a manner not inconsistent with this Act.

Sec. 28. Unless an ambulatory currency exchange shall engage in the business of selling or issuing money orders under his, their or its name, or any money orders other than those excepted in Section 1 of this Act, Sections 5, 6 and 7 of this Act shall not be applicable to it. Otherwise, said sections shall apply to it, if it shall engage in such business.

Sec. 29. The operation of any unlicensed community or ambulatory currency exchange, or the unlawful conduct or operation of any licensed community or ambulatory currency exchange, is hereby declared to constitute unfair competition with licensed and legally operated currency exchanges doing business in the same community. Any licensee operating legally under this Act in the same community shall have the right to apply to any court of competent jurisdiction for and obtain an injunction restraining such unfair competition.

Sec. 30. If any part or provision of this Act shall be declared unconstitutional, the unconstitutionality of such part or provision shall not invalidate the constitutional provisions of this Act.